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ABSTRACT

A state mandated evaluation study was done of certain programs and activities of the Mississippi Commissioner's Office of the Institutions of Higher Learning (IHL) including the Commissioner's Fund and operations of university foundations and athletic programs. This report presents findings, recommendations, and documentation, as well as responses of the various agencies and institutions under review. The evaluation found that the Board of Trustees of Institutions of Higher Learning does not fulfill its duty to assure that funds available to the Commissioner and donated to universities are spent efficiently and according to donor intent. The board also fails to assure efficient use of money donated to and earned by university athletic departments. University officials oppose state oversight of university/foundation fiscal practices. In addition, university officials receive additional compensation from university foundations and the Commissioner receives additional compensation from the Commissioner's fund both without legal authorization from the IHL board of trustees. The report finds that university administrators used public funds to finance football bowl game entertainment and gratuitous travel for officials other than coaches and students. Administrators also use unrestricted foundation donations for gratuitous travel, entertainment, and gifts to IHL board members and the Commissioner. The evaluation also found that university foundations routinely contract with businesses in which foundation board members have economic interests and athletic directors divert revenues into private corporations not subject to state control. Improved oversight is recommended. About half the document is taken up by the response of the Board of Trustees of the IHL to questions posed by the report in three areas: (1) the Commissioner's Fund; (2) Foundations; and (3) Athletics. Following the board's response are more detailed replies by the foundations and universities involved. In general it is the opinion of the Board that the PEER Report has resorted to the use of allegations, insinuations, and innuendos, many of which could have been eliminated with rudimentary good faith efforts. (JB)

ED354846

Report To

The Mississippi Legislature

#294

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A Management Review of the Institutions of Higher Learning: Commissioner's Office, University Foundations and Athletic Programs

March 12, 1993

PEER strongly supports private donors and foundation board members who raise money for state university academic programs and student activities. However, the Board of Trustees of Institutions of Higher Learning (IHL) does not fulfill legislative and constitutional intent to assure that funds available to the Commissioner and donated to universities are spent efficiently and according to donor intent. The board also fails to assure efficient use of money donated to and earned by university athletic departments. Although university foundations control 77% of all endowments held for the benefit of Mississippi universities ($80 million) and received $1.77 million in state funds in FY 1992, university officials oppose state oversight of university/foundation fiscal practices.

University officials receive additional compensation from university foundations and the Commissioner receives additional compensation from the Commissioner's Fund, both without legal authorization from the IHL board of trustees. University administrators used public funds (athletic department bowl receipts) to finance bowl game entertainment and gratuitous travel for officials other than coaches and students. They also used unrestricted foundation donations for gratuitous travel, entertainment, and gifts to IHL board members and the Commissioner.

Other findings:

- **University foundations routinely contract with businesses in which foundation board members have economic interests.**
- **Athletic directors at MSU, UM, and USM divert revenues earned by state-supported activities into private corporations not subject to state control. The athletic directors from MSU and UM receive benefits from such corporations. The MSU athletic director holds an ownership interest in a for-profit company operated by state employees which he attempted to conceal from PEER.**
- **The IHL board of trustees violated Section 96 of the MISSISSIPPI CONSTITUTION by approving $282,843 in bowl bonuses during fiscal years 1991 and 1992.**

The PEER Committee

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The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

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A Management Review of the Institutions of Higher Learning: Commissioner's Office, University Foundations, and Athletic Programs

March 12, 1993

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March 12, 1993

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At its meeting of March 12, 1993, the PEER Committee authorized release of the report entitled **A Management Review of the Institutions of Higher Learning: Commissioner's Office, University Foundations and Athletic Programs**.

Cecil McCrory

Representative Cecil McCrory, Chairman

This report does not recommend increased funding or additional staff.

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A Management Review of the Institutions of Higher Learning: Commissioner's Office, University Foundations and Athletic Programs

March 12, 1993

Executive Summary

Introduction

The PEER Committee received legislative requests to review certain activities of the Commissioner's Office of the Institutions of Higher Learning (IHL), including the Commissioner's Fund and to examine the operations of university foundations and athletic programs.

Commissioner's Office *(page 3)*

MISSISSIPPI CONSTITUTION Section 213-A establishes the Board of Trustees of Institutions of Higher Learning and MISS. CODE ANN. Section 37-101-1 establishes the state's eight public universities. The state constitution places all the state's institutions of higher learning under the "management and control" of the twelve-member board.

The Commissioner's Office, which is commonly referred to as the System Administration Office for budgetary purposes, is funded primarily by state general funds. For fiscal year 1992, total expenditures were $2.6 million, with about eighty percent funded by state general funds.

Commissioner's Fund (page 7)

IHL officials established the Commissioner's Fund in 1987 to provide additional benefits and discretionary funds for the new Commissioner of Higher Education, Dr. Ray Cleere. IHL board member Bryce Griffis had earlier negotiated with university presidents to commit funds for the incoming Commissioner's benefit. Presidents of all eight public universities agreed to provide a portion of the funding on an annual basis.

The Commissioner's Office annually assesses each university foundation an amount in proportion to the related university's share of the state appropriations to all of the universities for the year. Initially the university presidents committed to provide a cumulative total of $25,000 annually. Effective in fiscal year 1992, the amount has increased to $30,000. (See Exhibit A, page viii.)

The IHL Board of Trustees does not comply with its legal mandate to manage and control the activities of its Commissioner and staff, particularly in regard to management of the Commissioner's Fund.

According to the Commissioner, the board of trustees is fully aware of the activities of the fund. However, the board has never taken any formal action to approve the establishment of or management of the Commissioner's Fund by IHL staff. The Commissioner authorizes all expenditures. IHL staff write checks, maintain accounting records, and solicit annual contributions from university chief executives.

The IHL Board of Trustees is legally bound by the state's constitution to manage and control the institutions of higher learning. By having actual knowledge of the Commissioner's Fund and not taking corrective action, the board is in effect ignoring the activities of IHL staff with regard to the fund.

Additional Compensation for the Commissioner

- *The Commissioner's Fund provides additional compensation in excess of $17,000 per year to the Commissioner without the authorization of the IHL Board of Trustees.*

The Commissioner's Fund provides the Commissioner with an auto allowance ($5,400 per year), a $1 million life insurance policy (annual premium of $10,000), and club memberships at River Hills Club and Colonial Country Club in Jackson ($2,070 per year). The Commissioner stated that the IHL board was aware of, but had never formally approved this arrangement.

MISS. CODE ANN. Section 37-101-7 requires the IHL board to establish reasonable salaries for

Exhibit A

Commissioner's Fund Annual Assessments on University Foundations
Fiscal Years 1988-93

UNIVERSITY	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93	Total
Alcorn State University	$1,237	$770	$792	$785	$957	$945	$5,486
Delta State University	1,570	937	1,008	995	1,179	1,155	6,844
Jackson State University	2,813	1,673	1,605	1,577	1,905	1,893	11,466
Mississippi State University	6,424	7,431	7,604	7,642	8,970	8,964	47,035
Mississippi University for Women	1,070	592	580	580	723	690	4,235
Mississippi Valley State University	0	580	623	675	738	687	3,303
University of Mississippi	4,964	8,999	8,746	8,758	10,755	10,884	53,106
University of Southern Mississippi	6,030	4,018	4,042	3,988	4,773	4,782	27,633
Total	$24,108	$25,000	$25,000	$25,000	$30,000	$30,000	**$159,108**

Exhibit B

Questionable Expenditures of the Commissioner's Fund For the Fiscal Year Ended June 30, 1992

IHL staff picnic	$294.93
Entry fee for charity golf tournament	300.00
IHL staff member baby shower	131.80
Flu shots for selected IHL administrators	90.00
IHL staff parties	539.21
Admission to reception for Steve Patterson	100.00
Admission to reception for Kirk Fordice	250.00
IHL board Christmas party	1,808.01
Flowers for board party	153.00
Various contributions to charities	280.00
Invitations for board dinner	131.10
Cost to have board roast taped	275.00
Gifts for board members	248.44
Flowers	350.90
IHL board member football game trip	444.00
	$5,396.39

the Commissioner and his staff. IHL board policies also provide that the board shall fix the salaries of IHL staff. Allowing the Commissioner (or any IHL staff member) to receive unauthorized compensation for performing duties that they are already contractually obligated to perform jeopardizes the independence of the Commissioner.

- *The Commissioner receives a $5,400 annual auto allowance and also uses motor pool vehicles for official travel or receives full mileage reimbursement from IHL.*

The Commissioner's Fund makes an annual payment of $5,400 to the Commissioner which is classified as an auto allowance. In addition, the IHL office maintains a motor pool for use of the staff (including the Commissioner) when on official business. The Commissioner also uses a personal vehicle for IHL business and receives reimbursement for mileage. For fiscal years 1991 and 1992 the Commissioner was reimbursed for 3,805 miles of travel in a personal vehicle presumably provided using Commissioner's Fund resources.

Because the Commissioner's Fund effectively represents resources of IHL, this arrangement of receiving an auto allowance from one source and use of a vehicle or full mileage reimbursement from another does not represent an efficient use of IHL resources in the best interest of the system.

Questionable Expenditures

- *The Commissioner's Fund makes expenditures for which the benefit to the participating institutions is questionable.*

According to the Commissioner, he uses the Commissioner's Fund for expenditures that might not otherwise be proper if made from state funds. PEER identified expenditures of $5,396.39 for fiscal year 1992 with questionable benefit (such as IHL staff parties) to Mississippi's public universities. (See Exhibit B, page viii).

- *IHL officials knowingly expended $12,565 in funds that the Jackson State University Development Foundation had inadvertently transferred to the Commissioner's Fund.*

In 1989, Jackson State University officials inadvertently transferred $12,565 of their own foundation funds to the Mississippi Resource Development Corporation, a nonprofit corporation which maintains the Commissioner's Fund. IHL officials maintain that they attempted to return the funds, but that Jackson State officials refused the money. IHL officials then used the funds to pay for expenditures of the Commissioner's Fund, including entertainment.

After an October 1991 audit of the Jackson State University Development Foundation, Jackson State officials acknowledged that the Commissioner's Fund owed the foundation $12,565. The Commissioner's Fund had spent the funds. IHL and Jackson State officials negotiated a repayment schedule wherein Jackson State does not have to pay its annual assessment from the Commissioner's Fund until it has recouped its $12,565. Presently, the Commissioner's Fund owes the Jackson State foundation $8,767.

Reporting and Disclosure

- *IHL officials have not administered the Commissioner's Fund in accordance with Internal Revenue Service regulations.*

IHL officials have not filed the required information returns for the Mississippi Resource Development Corporation, which maintains the Commissioner's Fund, with the Internal Revenue Service. Penalties, if assessed, would be very substantial considering the relatively small amount of funding provided to the Commissioner's Fund.

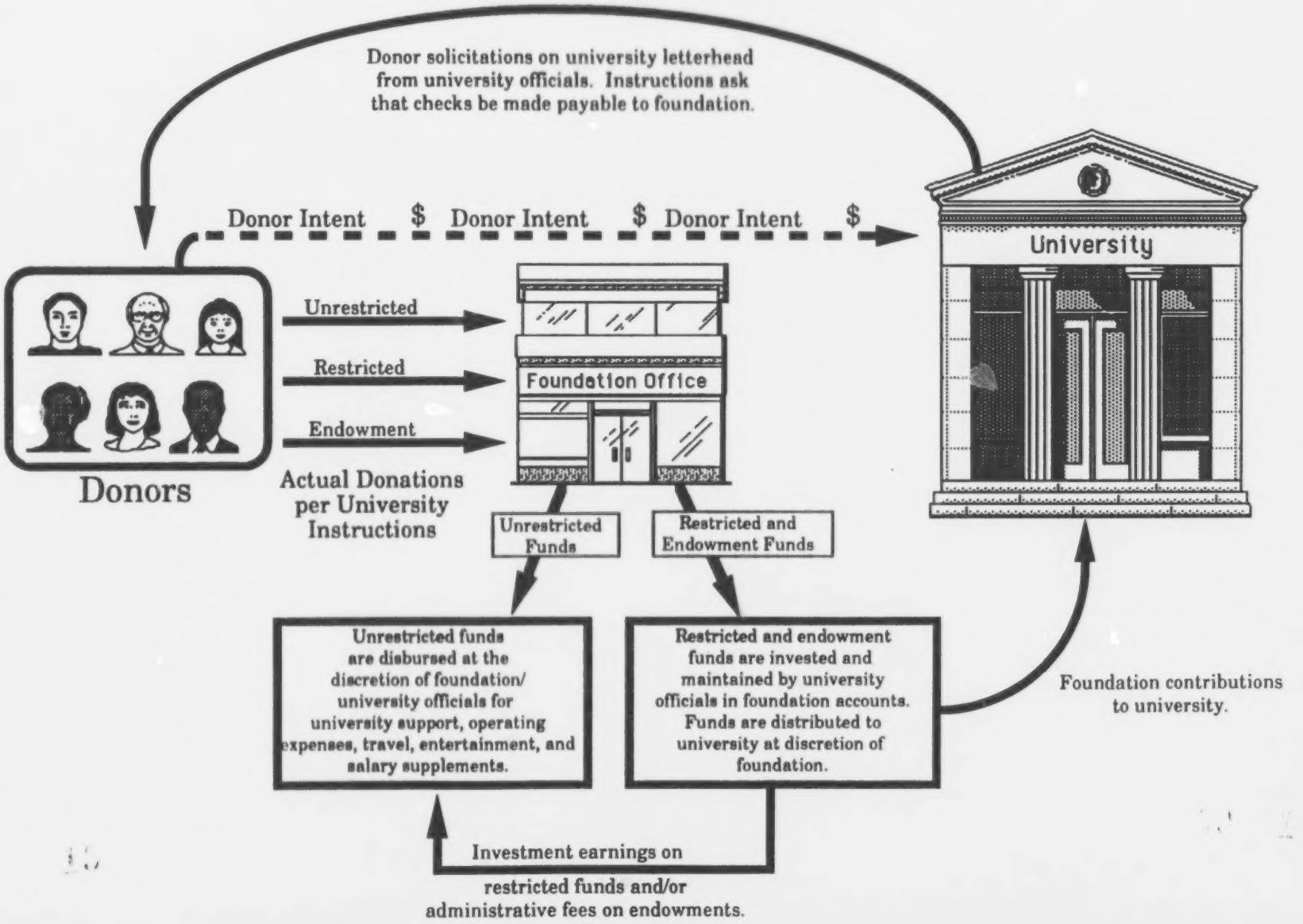
- *The Commissioner's Fund 1988-1991 audit was not performed in accordance with generally accepted auditing standards.*

IHL officials authorized a Jackson certified public accountant to perform an audit of the Commissioner's Fund for the three-year period ending June 30, 1991. The report does not meet generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants.

University Foundations *(page 19)*

Ten university foundations are associated with Mississippi's eight public universities. When soliciting donations, university officials generally instruct donors to make their donations payable to foundations. Exhibit C, page x, reflects the flow of

Exhibit C
Flow of Donations through Mississippi's Public University Foundations


Donor solicitations on university letterhead from university officials. Instructions ask that checks be made payable to foundation.
Donor Intent $ Donor Intent $ Donor Intent $
University
Unrestricted
Restricted
Endowment
Foundation Office
Donors
Actual Donations per University Instructions
Unrestricted Funds
Restricted and Endowment Funds
Unrestricted funds are disbursed at the discretion of foundation/ university officials for university support, operating expenses, travel, entertainment, and salary supplements.
Restricted and endowment funds are invested and maintained by university officials in foundation accounts. Funds are distributed to university at discretion of foundation.
Foundation contributions to university.
Investment earnings on restricted funds and/or administrative fees on endowments.

donations through a typical public university foundation in Mississippi. From a donor's perspective the contribution is made to a particular university in response to a solicitation by that university and the role of the foundation becomes that of a trustee.

As of June 30, 1992, seventy-seven percent of endowments on behalf of Mississippi's public universities were held by nonprofit corporations that are partially funded with state resources and staffed by state employees but not considered subject to state oversight. (See Exhibit D, page xii.)

University officials direct virtually all fundraising efforts to the foundations. The majority of endowments at all but one university are held by foundations. Since 1989, the net assets of these university foundations have increased by $38.8 million, six times as much as university endowments.

Each of the ten foundations is located on a university campus and staffed by university personnel. Typically, the foundation director is also the director (or vice president, etc.) of development or institutional advancement. These individuals are employed by IHL and report either directly or indirectly to the respective university chief executive officers. PEER estimates that universities provided at least $1.77 million in state funds for the operation of foundations during fiscal year 1992, while foundation funds provided $1 million for operating expenses.

In interviews with PEER staff, university officials consistently insisted that foundation operations are "private." University officials interpret "private" to mean that foundations are nongovernmental entities and not subject to state oversight. The most common reasons cited for excluding foundations from state oversight are the need to be able to make expenditures that might not otherwise be permissible under state law, and to protect the privacy of donors. PEER agrees that the use of state funds to operate university offices to raise funds for public universities is acceptable and necessary, though this does not in itself create a need for the fundraising operations to be excluded from state oversight.

The Board of Trustees of the Institutions of Higher Learning fails to manage and control the activities of university officials with regard to university foundations.

The IHL Board of Trustees has taken no action to institute controls to insure that university officials act in the best interest of their respective universities when managing foundations. University officials raise millions of dollars annually for foundations in the name of the respective affiliated universities using state resources, but are not accountable for the activities of the foundations. University officials do not report foundation activities to the IHL board in any manner.

MISSISSIPPI CONSTITUTION Section 213-A and MISS. CODE ANN. Section 37-101-1 place Mississippi's public universities under the management and control of the IHL Board of Trustees. Specifically, MISS. CODE ANN. Section 37-101-15 requires the board to:

> *(a) . . .exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter in possession, levied and collected, received, or appropriated for the use, benefit, support, and maintenance or capital outlay expenditures of the institutions of higher learning. . . .*

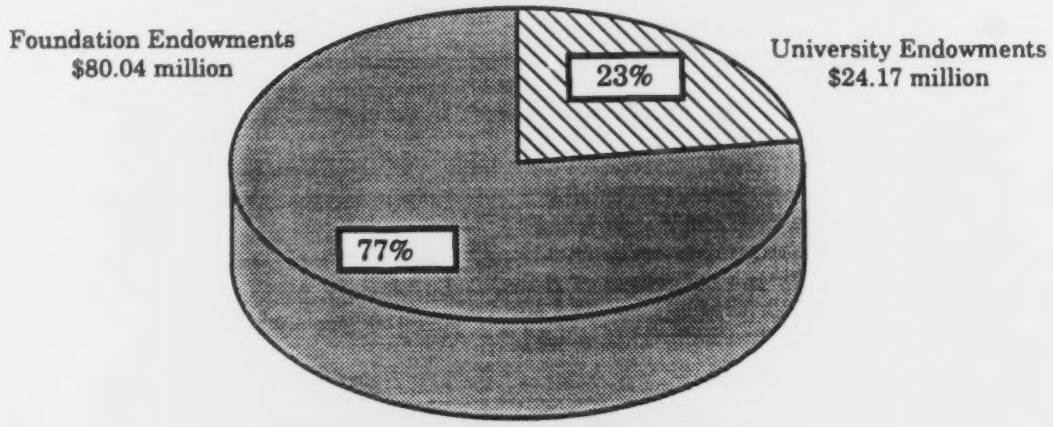
The statute clearly reflects legislative intent that the IHL Board of Trustees has sole authority over all funds collected for benefit or use of Mississippi's public universities. While this statute does not prohibit the delegation of that responsibility to a university foundation, it requires the IHL board to oversee such a relationship with an agent.

- *The IHL Board of Trustees' failure to control university foundations results in a lack of accountability for fundraising activities.*

University officials constantly express how important the foundations are to each university's existence. The fact is that each foundation's sole purpose for existence is to support its respective university. Without the universities, foundations have no purpose for existence. Thus the IHL board has obvious authority to exercise control over the relationships between universities and their respective foundations. If a foundation is to be permitted to raise and manage funds in the name of a university using university resources ($1.77 million for fiscal year 1992), it stands to reason that the

Exhibit D

Mississippi Public Universities
Comparison of Endowments - University and Foundation
As of June 30, 1992



Total Endowments -- $104.21 million

Exhibit G

Mississippi Public Universities
Bowl Game Revenues and Expenditures
Fiscal Years 1991 and 1992

	Revenues	Expenditures	Excess (Deficit) Revenues
Mississippi State University*	$525,506	$443,595	$81,911
University of Mississippi	498,602	499,374	(772)
University of Southern Mississippi	577,093	378,286	198,807
	$1,601,201	$1,321,255	$281,490

* Includes $70,485 in university foundation funds spent for bonuses, travel and entertainment.

university (and/or the IHL board) can place controls over the manner in which the foundation carries on such activities on behalf of the university.

- *University officials receive additional compensation from university foundations without IHL board authorization.*

Some university officials receive additional compensation from university foundations on an annual basis, with the most significant benefits provided to university chief executive officers. Besides the additional compensation provided to chief executives, university foundations provided $225,069 in cash supplements to university administrators and staff during fiscal year 1992. PEER reviewed employment contracts between university officials and the IHL board and determined that the contracts do not authorize additional compensation for university officials.

Permitting employees to receive additional compensation without authorization or oversight creates the potential for conflicts of interest for university officials. In many cases, the same individuals that control university funding of foundation operations also receive compensation from the unrestricted operating funds of the foundation (see Exhibit E, page xiv).

The IHL board's failure to authorize such additional compensation impedes the public's knowledge about the amount of compensation provided to these highly visible public servants. While the public has continually been reminded that its university chief executives are compensated at levels that are less than "average," such information only relates to their "base salaries" with no consideration or acknowledgement of additional compensation from university foundations. When a university's chief executive officer does not take the initiative to disclose foundation salary supplements, the problem is compounded. The Mississippi State University president has not disclosed his university foundation salary supplement ($66,200 for fiscal year 1992) to the Mississippi Ethics Commission in any of the last three years in violation of MISS. CODE ANN. Section 25-4-27.

- *University foundations have not been accountable for their activities, particularly the expenditure of unrestricted funds.*

Eight of Mississippi's ten university foundations are governed by self-perpetuating boards of directors. The board members are the only members of the nonprofit corporations and elect themselves. Donors are not members, as the only way to become a member of a foundation board is to be nominated and elected by a current board. This lack of accountability extends to university officials that are involved in foundation activities.

The use of unrestricted funds is an area where the lack of accountability creates the greatest potential for problems. The expenditure of unrestricted funds is left to the discretion of a foundation board of directors. While university officials are quick to point out that unrestricted funds make up a very small percentage of a foundation's total expenditures, unrestricted expenditures ($2.86 million for fiscal year 1992) represent one hundred percent of foundation funds for which boards have total discretion regarding use.

- *University officials use university foundation funds to provide gratuitous travel, entertainment and gifts for IHL board members and the Commissioner.*

During fiscal years 1991 and 1992, $24,252 in foundation expenditures were made specifically to provide entertainment, gifts, and entertainment-related travel for IHL board members and the commissioner (see Exhibit 16, page 37 of the report). As PEER did not examine all transactions, those expenditures identified do not necessarily represent all such expenditures.

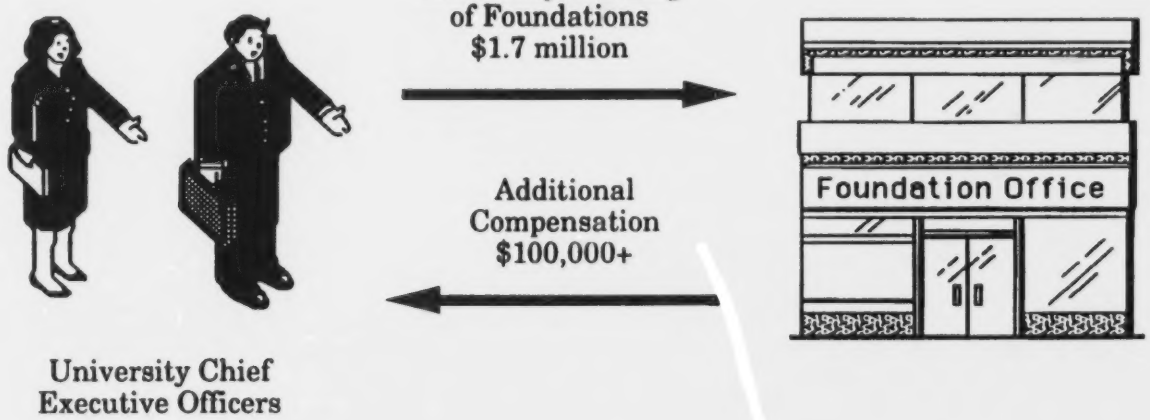
The payment of gratuitous expenses for IHL board members does not represent an effective use of foundation funds. Such expenditures do not represent fundraising expenditures, academic expenditures or operating expenditures. Based on the literature published by the universities regarding donated funds, donors are not told that their funds are used for such purposes. The expenditures identified would fund up to five full one-year scholarships at most of Mississippi's public universities.

- *University officials do not comply with all applicable Internal Revenue Service for nonprofit corporations in the administration of foundations.*

PEER did not review public university foundations solely for the purpose of determining whether the foundations comply with all applicable Internal Revenue Service laws and regulations. However,

Exhibit E

Apparent Conflict Created by Foundations Providing Additional Compensation to University Officials



PEER found problems at university foundations regarding compliance relating to:

- inadequate disclosure on information returns;
- failure to obtain tax-exempt status;
- failure to disclose limited deductibility of contributions; and,
- use of the foundation to provide gifts for individuals.

Mississippi public university foundations routinely contract with businesses in which their board members have significant financial interests.

Six foundations contract with a business of at least one of their board members. In most cases, these relationships occur because a foundation uses a financial institution as a depository while a director or officer of the financial institution sits on the foundation board. This does not necessarily mean that any of the board members with business interests in foundation activities have committed any act that was meant to benefit themselves or their companies.

Considering that universities have delegated virtually all fundraising and fund management responsibility to foundations and provide funding for such activities, service as a foundation board member comes very close to that of a public servant. MISS. CODE ANN. Section 25-4-105 (2) provides that:

> *No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.*

Independence in appearance is as important as independence in fact when government service is involved, particularly when a fiduciary responsibility as significant as that of a foundation board member is involved.

University Athletic Programs

(page 45)

Mississippi university athletic programs generated total revenues of $35.2 million during the fiscal year ended June 30, 1992, while total expenditures were $33.6 million.

None of Mississippi's university athletic programs are self-supporting, including football. Athletic programs rely on fee assessments against students as one of their primary funding sources, particularly the smaller universities. Student fees represent 21.3 percent of the funding for all Mississippi university athletic programs combined. Historically, universities have also relied on an annual transfer from their universities' operating funds (also known as education and general funds) to support their athletic programs.

The IHL Board of Trustees does not manage and control all public university athletic revenues and expenditures as required by MISS. CODE ANN. Section 37-101-15.

MISS. CODE ANN. Section 37-101-15 (a) requires the IHL Board of Trustees to:

> *have and exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter in possession, levied and collected, received, or appropriated for the use, benefit, support, and maintenance or capital outlay expenditures of the institutions of higher learning. . . .*

IHL officials assert that athletic budgets represent such a small percentage of the overall IHL budget (three percent) that specific board authorization is not warranted. The budgets actually prepared and submitted by university athletic departments to the IHL board are meaningless; IHL permits athletic departments to spend as much as they want as long as they do not exceed their total revenues within a fiscal year. For fiscal year 1992, athletic expenditures exceeded the amount reported to the IHL board in university budgets by $2.5 million (see Exhibit 22, page 52).

- *The Mississippi State University athletic director diverts athletic department rev-*

enues into a company of which he is president and a 25% owner.

Larry Templeton, Athletic Director at Mississippi State University, is also a stockholder, board member and president of a for-profit company, Bulldog Communications, Ltd. Mr. Templeton operates Bulldog Communications, Ltd., from the offices of the Mississippi State University athletic department utilizing university staff.

Mr. Templeton diverted $457,062 in athletic department revenues into Bulldog Communications, Ltd., during the business fiscal year ended April 30, 1992. Of this amount, $305,000 represented funds restricted by donors for athletics and held in the Mississippi State University Development Foundation, Inc. Mr. Templeton said that funds from the university foundation are transferred to Bulldog Communications, Ltd., for additional compensation to selected coaches in football, basketball and baseball, per donor restrictions.

Templeton also diverts revenues received from Mississippi State University sports radio broadcasts and payments from advertisers. He also operates Bulldog Publications, Inc., a subsidiary of Bulldog Communications, Ltd., from the offices of Mississippi State University's athletic department. Bulldog Publications, Inc., publishes a tabloid, *Dawgs' Bite*,, but does not have any personnel costs, as they are paid by Mississippi State University. *Dawgs' Bite* has annual revenues estimated at $111,000, all of which are deposited to accounts of Bulldog Publications, Inc.

Excess revenues over expenses of Bulldog Communications. Ltd., are held by the company as retained earnings. The retained earnings balance represents funds that should belong to the university, as they were donated to the university and the work was performed by university personnel. However, such funds belong to Mr. Templeton and other stockholders of the company.

The actions of the athletic director of Mississippi State University violate MISS. CODE ANN. Section 25-4-105 (1), which states:

> *No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.*

- *The University of Mississippi athletic director diverts athletic department revenues into a nonprofit athletic foundation from which he receives a housing allowance.*

Warner Alford, athletic director at the University of Mississippi, is also a board member of the Ole Miss Loyalty Foundation, a nonprofit corporation established to support the university's athletic program. In addition to overseeing the university's athletic department, Mr. Alford is also administratively responsible for the operations of the foundation. Mr. Alford has used his position as athletic director to divert university athletic revenues to the foundation.

Mr. Alford diverts funds from advertisers into the athletic foundation rather than the university. During the year ended June 30, 1992, Mr. Alford directed the diversion of $35,732 in funds paid by advertisers for association with the athletic program (e.g., scoreboard advertising, game program advertising) to the athletic foundation. A portion of the funds is used to provide additional compensation to the head football coach ($20,000). The other funds remain with the foundation to be spent at the discretion of university officials with no oversight. PEER noted that effective July 1, 1992, the athletic foundation began paying a housing allowance of $1,000 per month to Mr. Alford.

The actions of the Athletic Director of the University of Mississippi may also be in conflict with CODE Section 25-4-105 (1). In any case, the diversion of public funds from a public entity violates the public trust. IHL policy restates MISS. CODE ANN. Section 25-4-105 (1) and declares that all IHL officials and employees shall observe such laws.

- *The University of Southern Mississippi athletic director diverts athletic department advertising revenues into the university foundation accounts over which he has full discretion but from which he receives no personal benefit.*

Bill McLellan, the University of Southern Mississippi athletic director, oversees a program known as the "Patron Eagles." Under this program supporters purchase a membership (one year-$12,000, three year-$10,000/year, and five year-$9,000/year) that entitles the participant to certain benefits. The program is geared primarily to businesses. In exchange for a membership, the athletic department provides advertising on a billboard located on

the university campus, recognition in game programs, public address announcements at university athletic events, twenty-four season tickets to University of Southern Mississippi football, basketball, and baseball games (total of seventy-two season tickets), and preferred parking privileges at the games.

Mr. McLellan directs all funds from "Patron Eagle" members into an athletics account in the University of Southern Mississippi Foundation. Mr. McLellan has discretion to spend the funds in the foundation account at his discretion. During fiscal year 1992, the athletic department received $67,000 for "Patron Eagle" memberships and deposited this amount to the university foundation.

The IHL Board of Trustees' failure to control the actions of athletic directors in arranging compensation packages for head coaches may jeopardize the coaches with regard to state law.

During 1992 public university head coaches received at least $562,234 in compensation above the amount specifically authorized by the IHL Board of Trustees (see Exhibit F, page xviii). Most of the additional compensation was paid in cash and came from entities outside the universities. According to university athletic directors, the head coaches have separate contracts with these outside entities (e.g., radio networks, sporting goods companies).

This lack of control by the IHL Board of Trustees and actions of athletic directors in arranging such compensation packages for head coaches may be jeopardizing the coaches with regard to Mississippi state laws. As stated earlier, MISS. CODE ANN. Section 25-4-105 (1) provides that:

> *No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.*

These coaches receive additional compensation because of their positions as head coaches at the respective public universities. Sponsor endorsements and radio/television "talent fees" would not be available to these individuals were they not head coaches of the respective universities. Other public servants are not permitted to use their official positions to obtain additional compensation and PEER noted no exceptions in law for athletic coaches.

Post-Season Bowl Games

Mississippi State University, the University of Mississippi and the University of Southern Mississippi each appeared in a post-season football game during the two-year period ended June 30, 1992. Each university received revenue for its football team's post-season appearance.

PEER reviewed the total revenues and expenditures of the three bowl games and determined that inefficient use of the funds resulted in the University of Mississippi spending more than it made for its 1991 Gator Bowl appearance (see Exhibit G, page xii).

The IHL Board of Trustees authorized a total of $282,843 in bonuses for athletic staff at MSU, UM, and USM for post-season bowl game appearances during fiscal years 1991 and 1992 in violation of Section 96 of the MISSISSIPPI CONSTITUTION.

The IHL Board of Trustees authorized bonuses for University of Mississippi athletic staff and University of Southern Mississippi athletic staff at it January 17, 1991, meeting and for Mississippi State University athletic staff at its January 16, 1992, meeting. Individual bonuses generally amounted to the equivalent of one month's salary and were paid to athletic staff (football coaches, trainers, athletic directors, sports information personnel, ticket office staff, secretaries, etc.) (See Exhibit 26, page 63.)

Section 96 of the MISSISSIPPI CONSTITUTION provides that:

> *The legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made. . . .*

Courts have held that this constitutional prohibition applies to the Legislature and all subordinate state agencies created or controlled by it.

Public university officials use public funds to provide entertainment and travel for univer-

Exhibit F

Mississippi Public Universities
Additional Annual Compensation Provided to Head Coaches, 1992*

	Football	Men's Basketball	Women's Basketball	Baseball	Other	Totals
Alcorn State University	$3,700				$4,400	$8,100
Delta State University		$2,511	$9,549	$2,976	678	15,714
Jackson State University						0
Mississippi State University	203,190	50,500		25,000		278,690
Mississippi University for Women					2,491	2,491
Mississippi Valley State University						0
University of Mississippi	118,500	**	19,500	17,660	19,977	175,637
University of Southern Mississippi	30,000	37,500	7,000	3,000	4,102	81,602
						$562,234

Note: Does not include value of complimentary autos provided by auto dealers and auto insurance provided by athletic departments or university foundations.

* Some coaches are paid on a fiscal year basis, while others are paid on a calendar year basis.

** The University of Mississippi employed a new men's basketball coach during 1992. His anticipated additional compensation for fiscal year 1993 is $45,000.

sity administrative staff and IHL board members in relation to post-season bowl games.

PEER reviewed expenditure records of MSU, UM, and USM related to their post-season bowl game appearances during 1990 and 1991. In addition to providing travel and entertainment for the teams and support staff (e.g., coaches, trainers), athletic directors also authorized travel and entertainment expenditures for athletic administrative staff, university administrative staff and IHL board members.

Although athletic departments do not maintain records in sufficient detail to determine the exact amount spent for non-essential staff travel and entertainment; however, certain travel appeared non-essential:

- MSU athletic officials authorized travel and entertainment for twenty-two administrative staff members of the athletic department
- UM athletic officials authorized travel and entertainment expenditures for thirty-one athletic administrative staff, six members of the university athletic committee, three university vice-chancellors, twelve IHL board members and the IHL commissioner.
- USM athletic officials authorized travel and entertainment expenditures for ten athletic administrative staff, six university administrators and seven IHL board members.

Spending for travel and entertainment for non-essential administrative staff, university officials and IHL board members is neither effective nor efficient.

Conclusion and Recommendations

(page 66)

The IHL board has not adequately controlled IHL operations as they relate to the establishment and management of nonprofit corporations (the university foundations and the Commissioner's Fund) to which universities have delegated all of their fundraising authority.

In many cases, athletics is the most visible aspect of a university's operations due to the level of press coverage provided (daily reports in newspapers and television newscasts). With such significant public exposure and a historical tendency to avoid public disclosure, university athletic departments warrant additional oversight by the IHL Board of Trustees and staff.

Recommendations

1. The Mississippi Legislature should amend MISS. CODE ANN. Section 25-61-3 to include the records (excluding records identifying donors) of nonprofit organizations such as university foundations within the definition of public records.

2. The IHL Board of Trustees should establish policies to govern relationships between public universities and nonprofit corporations (foundations) that universities have designated as their respective fundraising agents. Such policies should include requirements that:

   - each university request authorization to designate a fundraising entity other than the university;
   - each university and related foundation annually report to the IHL Board of Trustees in a standard format :
     - — total foundation revenues and expenditures in detail;
     - — unrestricted revenues and expenditures in detail;
     - — amount of funds transferred to the university during the year;
     - — average annual return on foundation investments; and,
     - — amount of university-provided support (funding, staff, facilities, etc.);
   - each foundation provide IHL central office staff complete access to foundation records and staff;
   - university foundations fully comply with Internal Revenue Service laws and regulations;

- prohibit IHL board members, central office staff or university staff from receiving any gratuity from public university foundations; and,

- prohibition of a public university from associating with a foundation that maintains business relationships with entities with which any foundation board member has a material financial interest.

3. The IHL Board of Trustees should establish policies to prohibit IHL central office staff and university staff from receiving additional compensation from foundations or other entities for duties already performed under an employment contract with the IHL Board of Trustees.

4. The PEER Committee intends to conduct a follow-up review and report to the 1994 Legislature as to whether the IHL Board of Trustees has implemented policies regarding relationships between universities and their foundations. If the IHL Board of Trustees has not taken such action, the PEER Committee will recommend that the 1994 Legislature amend MISS. CODE ANN. Section 37-101-15 to require the IHL board to maintain oversight over public universities' foundation relationships through the establishment of such policies.

5. The Commissioner of Higher Education should direct his staff to immediately repay the Jackson State University Development Foundation, Inc. from funds available in the Commissioner's Fund.

6. The IHL Board of Trustees should refrain from authorizing the payment of bonuses to university athletic staff members (or any IHL/university staff member).

7. The Mississippi Ethics Commission should review the activities of the athletic directors of Mississippi State University and the University of Mississippi with regard to their diversion of public funds into entities from which they receive compensation or other benefits. The Ethics Commission should also review the failure of the Mississippi State University president to disclose compensation from the Mississippi State University Development Foundation, Inc., on his annual Statement of Economic Interest.

8. The Office of the Attorney General should further investigate the activities of the relationship between the athletic department of Mississippi State University and Bulldog Communications, Ltd. (a company partly owned by the university's athletic director).

9. The IHL Board of Trustees should develop a uniform reporting format and require university athletic departments to account for and report all athletic department revenues and expenditures.

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A Management Review of the Institutions of Higher Learning: Commissioner's Office, University Foundations and Athletic Programs

Introduction

The PEER Committee received a request from a legislator to review certain activities of the Commissioner's Office of the Institutions of Higher Learning (IHL), including the Commissioner's Fund (a nonprofit corporation established to provide benefits for and support activities of the Commissioner of Higher Education). PEER also received a request from a legislator to examine the operations of university foundations and athletic programs at each of the state's eight public universities.

Authority

The PEER Committee initiated this review at its December 17, 1991, meeting, pursuant to MISS. CODE ANN. Section 5-3-57 (1972).

Scope and Purpose

In responding to the legislative requests, PEER sought to:

- analyze expenditures of the Commissioner's Office of IHL;
- review the use of state vehicles by IHL central office staff;
- review the funding and activities of the Commissioner's Fund;
- review IHL policies and procedures related to oversight of university foundations and athletic programs;
- analyze the relationship between universities and their respective foundations, including revenues and expenditures;
- analyze the revenues and expenditures of university athletic programs; and,
- determine the salaries of employees of the Commissioner's Office of the Institutions of Higher Learning.

Methodology

While conducting this review, PEER performed the following tasks:

- reviewed applicable Mississippi statutes, federal and state tax laws and the MISSISSIPPI CONSTITUTION;
- reviewed policies and board minutes of the Board of Trustees of IHL;
- reviewed and analyzed organizational charts, personnel listings, budget requests, financial reports/transactions, and other relevant agency documentation of the IHL central office;
- reviewed board minutes, accounting records, audit reports, bank records, and other relevant documentation of the Commissioner's Fund;
- reviewed board minutes, personnel records, accounting records, budgets, audit reports and other relevant documentation at each public university's development office in relation to foundation activities of each office;
- reviewed personnel records, accounting records, budgets, and other relevant documentation at each public university's athletic department; and,
- interviewed officials at the IHL central office and each of the eight public universities.

Commissioner's Office

Background

MISSISSIPPI CONSTITUTION Section 213-A establishes the Board of Trustees of Institutions of Higher Learning and MISS. CODE ANN. Section 37-101-1 establishes eight public universities: Alcorn State University, Delta State University, Jackson State University, Mississippi State University, Mississippi University for Women, Mississippi Valley State University, University of Mississippi, and University of Southern Mississippi. The state constitution places all the state's institutions of higher learning under the "management and control" of the twelve-member board.

Budgetary Structure of the Institutions of Higher Learning

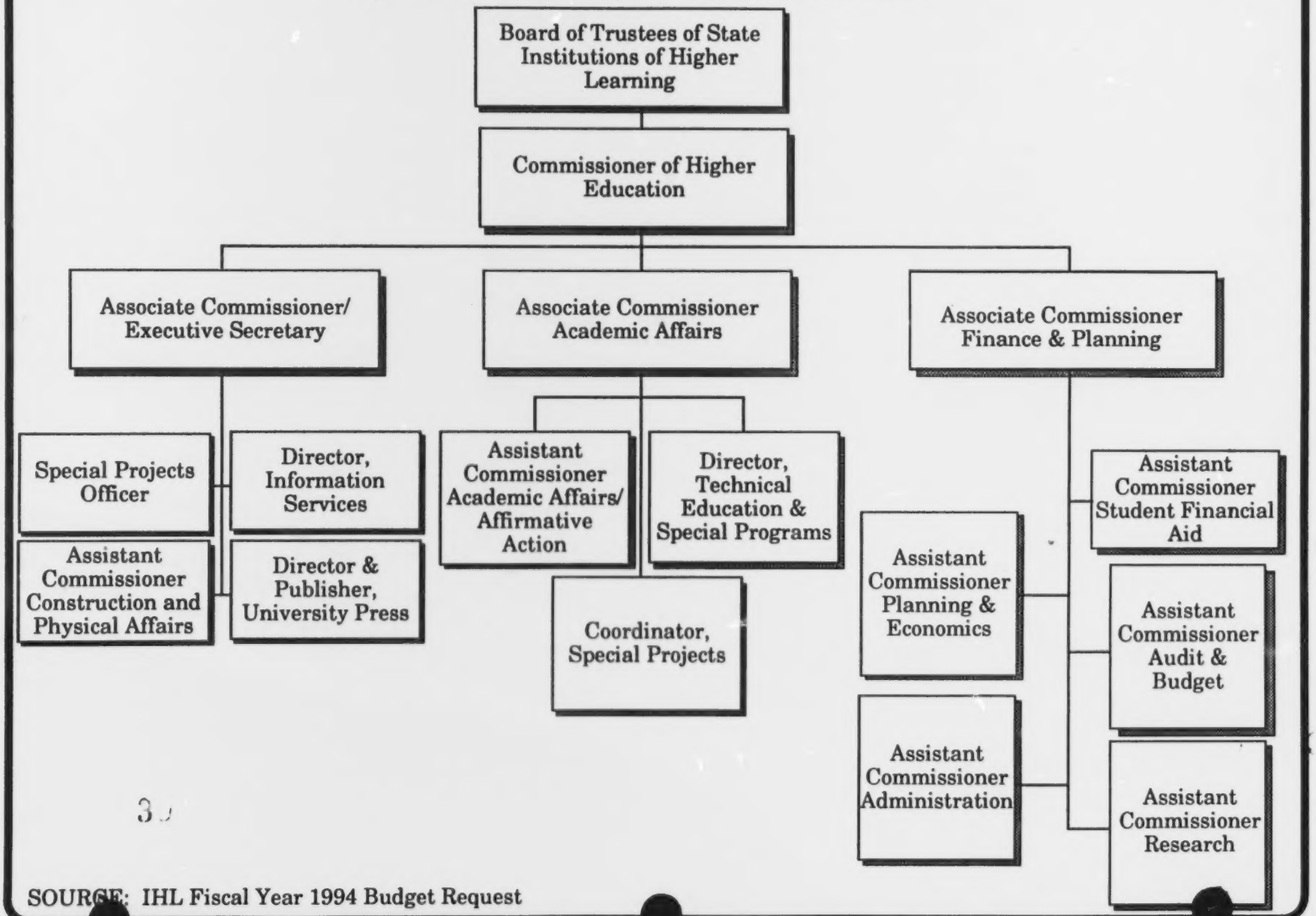
The Board of Trustees of IHL makes policies for the state's institutions of higher learning and those policies are implemented through the Commissioner of Higher Education and forty-three support staff housed at the Universities Center in Jackson (see Exhibit 1, page 4). The Commissioner's Office is commonly referred to as the System Administration Office for budgetary purposes. Though IHL receives a lump sum appropriation from the Legislature, many IHL entities submit separate budget requests to the Legislature annually, including the System Administration Office. Other IHL budgetary units at the Universities Center that rely primarily on state general funds include the University Research Center, Student Financial Aid, and the Mississippi Automated Resource Information System (MARIS).

Funding of the Commissioner's Office (System Administration Office)

The System Administration Office is funded primarily by state general funds. For fiscal year 1992, total expenditures for the System Administration Office were $2.6 million, with about eighty percent of the budget funded by state general funds. The system administration budget has increased from $1.16 million to $2.6 million over the last five years (see Exhibit 2, page 5). Appendix A, page 71, reflects the expenditures during this period by major object and funding source.

During fiscal year 1992, personnel costs represented about sixty-three percent of the total expenditures for the System Administration Office (see Exhibit 3, page 6). The System Administration Office had forty-four authorized positions as of June 30, 1992 (thirteen management positions, thirteen professional positions, thirteen clerical positions and five technical positions). System administration staff has increased from twenty-four

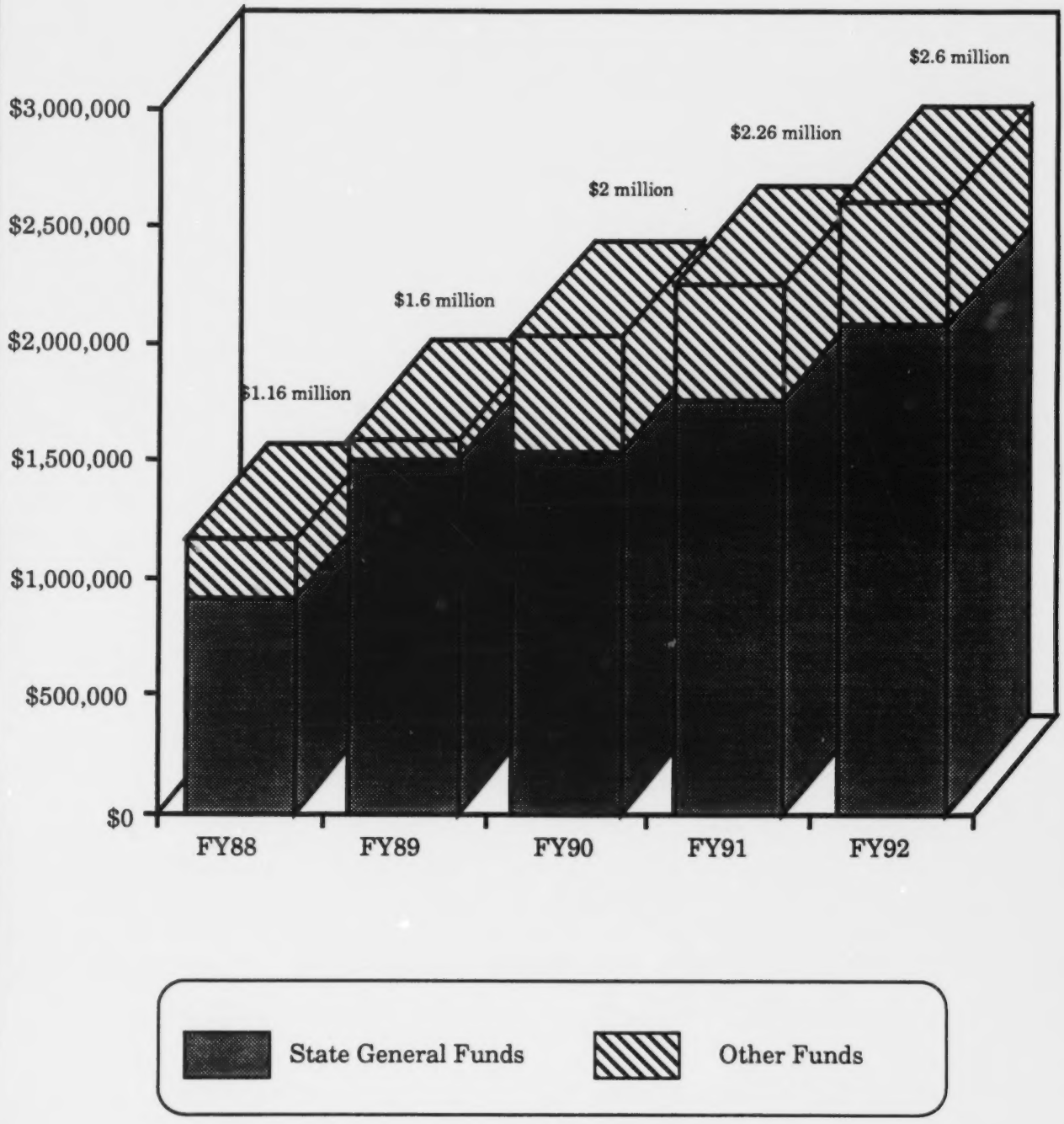
Exhibit 1
Organization Chart of System Administration Office


Board of Trustees of State Institutions of Higher Learning
Commissioner of Higher Education
Associate Commissioner/ Executive Secretary
Associate Commissioner Academic Affairs
Associate Commissioner Finance & Planning
Special Projects Officer
Director, Information Services
Assistant Commissioner Construction and Physical Affairs
Director & Publisher, University Press
Assistant Commissioner Academic Affairs/ Affirmative Action
Director, Technical Education & Special Programs
Coordinator, Special Projects
Assistant Commissioner Planning & Economics
Assistant Commissioner Administration
Assistant Commissioner Student Financial Aid
Assistant Commissioner Audit & Budget
Assistant Commissioner Research

SOURCE: IHL Fiscal Year 1994 Budget Request

Exhibit 2

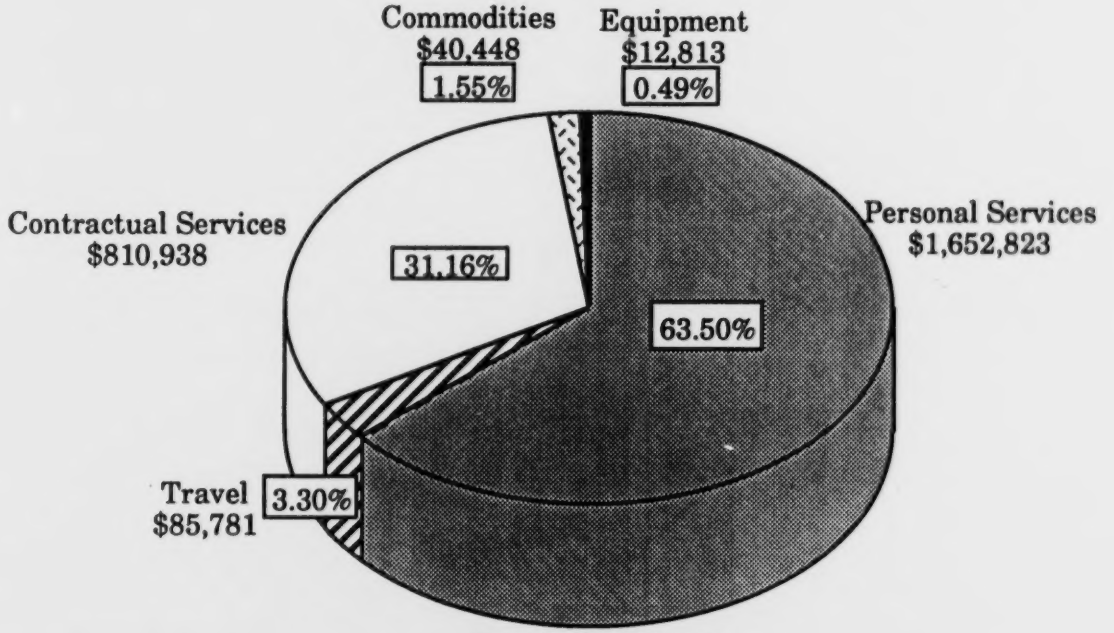
Institutions of Higher Learning
System Administration Expenditures
FY 1988 Through FY 1992



SOURCE: PEER analysis of IHL budget requests.

Exhibit 3

Institutions of Higher Learning
System Administration Office Expenditures
Fiscal Year 1992



Total - $2,602,803

SOURCE: PEER analysis of fiscal year 1994 budget request.

positions to forty-four positions during the last five years. A schedule of all system administration staff including titles and salaries as of June 30, 1992, is presented at Appendix B, page 72. The schedule also includes titles and salaries of the staff of other IHL entities located at the Universities Center.

Per the legislative request to review the expenditures of the System Administration Office, PEER compared the expenditures of the office to the appropriated expenditures of the entire IHL system for the last four fiscal years (see Exhibit 4, page 8). In its appropriation to IHL for fiscal year 1993, the Legislature included a requirement that the general fund expenditures of the "executive office of the board of trustees" cannot exceed one percent of the total appropriations of IHL ($6.1 million in FY 1992).

History and Purpose of the Commissioner's Fund

IHL officials established the Commissioner's Fund in December 1987 to provide additional benefits and discretionary funds for the new Commissioner of Higher Education, Dr. Ray Cleere. IHL board member Bryce Griffis had earlier negotiated with university presidents to commit funds to be used for the incoming Commissioner's benefit. Presidents of all eight public universities agreed to provide a portion of the funding on an annual basis.

The Commissioner's Fund was maintained within the Jackson State University Development Foundation, Inc., until December 1989. At that time, IHL officials reactivated the Mississippi Resource Development Corporation, a nonprofit corporation and a former adjunct of the Mississippi Research and Development Center. IHL officials asked all of the former members of the Mississippi Resource Development Corporation Board to resign and replaced them with three IHL staff members and two IHL board members (appointed by the president of the IHL Board of Trustees). All Commissioner's Fund monies were transferred from the Jackson State Development Foundation, Inc., to the Mississippi Resource Development Corporation.

The Commissioner's Fund receives its funding from the eight university foundations per the commitments from university presidents in 1987. The Commissioner's Office annually assesses each foundation an amount in proportion to the related university's share of the state appropriations to all of the universities for the year. Initially the university presidents committed to provide a cumulative total of $25,000 annually for support of the fund. Effective in fiscal year 1992, the amount has increased to $30,000 annually. Exhibit 5, page 9, reflects the annual assessments for each university foundation from inception of the Commissioner's Fund in fiscal year 1988 through fiscal year 1993.

Exhibit 4

Institutions of Higher Learning
Comparison of Expenditures from Appropriated Funds
Fiscal Years 1989 - 1992

	FY 1989	FY 1990	FY 1991	FY 1992
State General Fund Expenditures				
System Administration Office	$1,509,937	$1,542,298	$1,760,916	$2,088,103
All IHL Entities*	313,017,061	314,327,540	305,417,033	280,972,716
Other Expenditures--Appropriated Funds				
System Administration Office	$82,976	$483,874	$496,400	$514,700
All IHL Entities	227,987,161	262,722,207	276,492,761	329,105,186
Total Expenditures--Appropriated Funds				
System Administration Office	$1,592,913	$2,026,172	$2,257,316	$2,602,803
All IHL Entities	$541,004,222	$577,049,747	$581,909,794	$610,077,902

* Public universities and all divisions thereof.

SOURCE: PEER analysis of IHL budget requests for Fiscal Years 1991-94.

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Exhibit 5

Commissioner's Fund Annual Assessments
On University Foundations
Fiscal Years 1988-93

UNIVERSITY	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993	Total
Alcorn State University	$1,237	$770	$792	$785	$957	$945	$5,486
Delta State University	1,570	937	1,008	995	1,179	1,155	6,844
Jackson State University	2,813	1,673	1,605	1,577	1,905	1,893	11,466
Mississippi State University	6,424	7,431	7,604	7,642	8,970	8,964	47,035
Mississippi University for Women	1,070	592	580	580	723	690	4,235
Mississippi Valley State University	0	580	623	675	738	687	3,303
University of Mississippi	4,964	8,999	8,746	8,758	10,755	10,884	53,106
University of Southern Mississippi	6,030	4,018	4,042	3,988	4,773	4,782	27,633
Total	$24,108	$25,000	$25,000	$25,000	$30,000	$30,000	**$159,108**

SOURCE: PEER Analysis of IHL and university financial records.

Although the primary purpose of the Commissioner's Fund is the provision of additional benefits to the Commissioner of Higher Education, the fund is also used to defray other costs of the Commissioner's Office "that cannot be provided from state source funds," primarily travel (e.g., for the Commissioner's spouse), entertainment and gift expenses. Exhibit 6, page 11, presents the revenues and expenditures of the fund for each year since its inception. The Commissioner also hosts special functions (dinners) periodically, and each university foundation contributes a proportionate share of the cost of the function as a one-time assessment.

Findings

The IHL Board of Trustees does not comply with its legal mandate to manage and control the activities of its Commissioner and staff, particularly in regard to management of the Commissioner's Fund.

As stated earlier two IHL board members serve (per appointment by the president of the IHL Board of Trustees) on the board of directors of the nonprofit corporation that administers the Commissioner's Fund. In addition, an IHL board member recruited the current Commissioner with a promise of benefits that are provided by the Commissioner's Fund. According to the Commissioner, the board of trustees is fully aware of the activities of the fund. However, the board of trustees has never taken any formal action to approve the establishment of or management of the Commissioner's Fund by IHL staff.

The Commissioner's Fund was established by IHL staff and is presently operated under the direction of the Commissioner. The corporate board of directors of the Mississippi Resource Development Corporation has been mostly inactive other than passing a resolution that gives the Commissioner full discretion on Commissioner's Fund expenditures within certain broad guidelines (see Appendix C, page 81). The Commissioner authorizes all expenditures. IHL staff write checks, maintain accounting records, solicit annual contributions from university presidents, and maintain other corporate records. All of these activities are conducted at the System Administration Offices in Jackson. Though the Commissioner's Fund is a relatively small entity, IHL staff estimate that contracting with professionals to perform the administrative functions of the fund would cost more than the annual contributions provided by the university foundations.

The IHL Board of Trustees is legally bound by state statutes and the state's constitution to manage and control the institutions of higher learning. Within this authority, MISS. CODE ANN. Section 37-101-7 authorizes the board to employ a Commissioner and other personnel as necessary to carry out the functions of the board. The statute also gives the board the authority to direct the Commissioner and staff as necessary to carry out the functions of the board. The board of trustees directs the

Exhibit 6

Commissioner's Fund Revenues and Expenditures
Fiscal Years 1988 - 1992

	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992
REVENUES					
Institutions' contributions	$24,108	$25,000	$25,000	$25,000	$28,095
Expense reimbursements	•••	7,514	5,039	21,622	5,044
Foundation Donation	•••	•••	13,873	•••	•••
Other	•••	2,313	62	800	362
Total Revenues	$24,108	$34,827	$43,974	$47,422	$33,501
EXPENDITURES					
Operating					
Entertainment	$13,985	$14,035	$19,799	$25,091	$15,373
Travel	797	2,579	1,978	858	2,795
Flowers & gifts	•••	3,720	1,112	962	1,381
Contributions	250	840	1,410	185	1,030
Supplies	1,128	833	404	869	1,225
Other	832	661	2,345	7,469	1,125
	$16,992	$22,668	$27,048	$35,434	$22,929
Commissioner's Benefits					
Life insurance	•••	•••	•••	$10,000	$10,000
Auto	$3,942	$6,043	$7,346	5,400	5,400
Dues & memberships	1,239	2,745	2,515	2,453	2,206
	$5,181	$8,788	$9,861	$17,853	$17,606
Total Expenditures	$22,173	$31,456	$36,909	$53,287	$40,535
Excess Revenues over (under) Expenditures	$1,935	$3,371	$7,065	($5,865)	($7,034)

SOURCE: Commissioner's Fund Audit Reports

Commissioner and staff through official board action at board meetings, generally through the establishment of policies and procedures. By having actual knowledge of the Commissioner's Fund and not taking corrective action, the board is in effect ignoring the activities of IHL staff with regard to the fund.

Additional Compensation for the Commissioner

- *The Commissioner's Fund provides additional compensation in excess of $17,000 per year to the Commissioner of Higher Education without the authorization of the IHL Board of Trustees.*

As stated earlier, the primary purpose of the Commissioner's Fund is the provision of benefits to the Commissioner of Higher Education. The Commissioner's Fund provides the Commissioner with an auto allowance ($5,400 per year), a $1 million life insurance policy (annual premium of $10,000), and club memberships at River Hills Club and Colonial Country Club in Jackson ($2,070 per year). For fiscal year 1992, the actual benefits funded by the Commissioner's Fund totalled $17,606 (see Exhibit 6, page 11). These benefits represent fifty-seven percent of the amount contributed annually by the university foundations to the Commissioner's Fund.

According to Dr. Cleere, IHL board member Bryce Griffis (appointed to recruit Cleere) offered these benefits to him in addition to the base salary and benefits that would be paid by IHL with state funds. Dr. Cleere stated that the IHL board was aware of this arrangement but had never formally approved it in a meeting. IHL officials feel that the Commissioner's additional benefits are funded with money received from university foundations and are not subject to oversight or control by state governmental entities.

MISS. CODE ANN. Section 37-101-7 provides that the IHL board shall establish reasonable salaries for the Commissioner and his staff. IHL board policies also provide that the board shall fix the salaries of IHL staff. This statute and board policy imply that the intent of the Legislature and the IHL board was that the IHL board should determine the amount of compensation that its employees would receive for performing duties assigned them by the board, regardless of the source.

Allowing the Commissioner (or any IHL staff member) to receive unauthorized compensation for performing duties that they are already contractually obligated to perform for the board jeopardizes the independence of the Commissioner. The Commissioner is responsible for overseeing activities at eight separate institutions whose presidents authorize the funding of the Commissioner's benefits. The three largest universities provide eighty percent of this funding for the provision of the benefits to the Commissioner.

- *The Commissioner receives an annual auto allowance of $5,400 and also uses IHL motor pool vehicles for official travel or receives full mileage reimbursement from IHL.*

The Commissioner's Fund makes an annual payment of $5,400 to the Commissioner which is classified as an auto allowance. In addition, the IHL System Administration Office maintains a motor pool of vehicles for use of the staff when on official business. Among the vehicles is one that is unofficially assigned to the Commissioner (the Commissioner told PEER staff that it was not officially assigned to him, but it was his "favorite"). PEER reviewed vehicle logs and noted that the Commissioner frequently uses the motor pool vehicle for official travel. The Commissioner also uses a personal vehicle for IHL business and receives reimbursement for mileage. For fiscal years 1991 and 1992 the Commissioner was reimbursed for 3,805 miles of travel in a personal vehicle presumably provided using Commissioner's Fund resources.

The Commissioner stated that the receipt of an auto allowance by someone in his position is very common. He stated that he did not receive a housing allowance, and believed that the auto allowance was acceptable. The Commissioner also stated that the auto allowance was offered to him during his recruitment and not something that he created on his own.

IHL officials have repeatedly stated to the Legislature that their funding is too low, and as a result, they must do a good job of spending their resources as efficiently and effectively as possible. Because the Commissioner's Fund effectively represents resources of IHL, this arrangement of receiving an auto allowance from one source and use of a vehicle or full mileage reimbursement from another does not represent an efficient use of IHL resources in the best interest of the system.

Questionable Expenditures

- *The Commissioner's Fund makes expenditures for which the benefit to the participating institutions is questionable.*

While a large portion of the monies provided to the Commissioner's Fund is used to provide benefits to the Commissioner, a significant portion is used to make expenditures at the discretion of the Commissioner. According to the Commissioner, he uses the fund for expenditures that might not otherwise be proper if made from state funds. Among the expenditures reviewed by PEER were a significant number of transactions for which the benefit to participating universities is questionable. PEER identified expenditures of $5,396.39 for fiscal year 1992 with questionable benefit (such as IHL staff parties) to Mississippi's public universities. (See Exhibit 7, page 14). Because of limited documentation, PEER was unable to

Exhibit 7

Questionable Expenditures of the Commissioner's Fund For the Fiscal Year Ended June 30, 1992

IHL staff picnic	$294.93
Entry fee for charity golf tournament	300.00
IHL staff member baby shower	131.80
Flu shots for selected IHL administrators	90.00
IHL staff parties	539.21
Admission to reception for Steve Patterson	100.00
Admission to reception for Kirk Fordice	250.00
IHL board Christmas party	1,808.01
Flowers for board party	153.00
Various contributions to charities	280.00
Invitations for board dinner	131.10
Cost to have board roast taped	275.00
Gifts for board members	248.44
Flowers	350.90
IHL board member football game trip	444.00
	$5,396.39

SOURCE: Analysis of Commissioner's Fund accounting records.

determine the purpose of many other expenditures. Thus this schedule does not necessarily represent all questionable expenditures for the period.

The Commissioner has complete and sole discretion to make expenditures from the fund. Such purchases are not subject to state purchasing laws and have not been subjected to regulation by the IHL Board of Trustees. The Commissioner apparently believed that expenditures such as those listed in Exhibit 7 were necessary and appropriate.

University foundations, which provide funding for the Commissioner's Fund, receive their funding from donors. It is safe to assume that donors intend that their donations be used to benefit the particular university to which they contribute. None of the university foundation funds provided to the Commissioner's Fund represent donations that were designated by donors to help finance the Commissioner's Fund. Instead they represent funds on which donors made no restrictions. PEER was unable to ascertain any benefit provided to the universities from the expenditures presented in Exhibit 7, page 14.

In effect, funds donated for particular universities' benefit which were subsequently transferred to the Commissioner's Fund have not been used to benefit those universities. The amount of questionable expenditures identified by PEER for fiscal year 1992 would have funded a full one-year scholarship at any of the state's public universities.

- *IHL officials knowingly expended $12,565 in funds that the Jackson State University Development Foundation had inadvertently transferred to the Commissioner's Fund.*

At the time the Commissioner's Fund was moved from the Jackson State University Development Foundation, Inc., in 1989, Jackson State University officials inadvertently transferred $12,565 of their own foundation funds to the Mississippi Resource Development Corporation. IHL officials maintain that they attempted to return the funds, but Jackson State officials refused, stating that the proper amount had been transferred. IHL officials then began using some of the funds to pay for regular expenditures of the Commissioner's Fund, including entertainment and, in one case, an IHL staff Christmas party.

Subsequent to an October 1991 audit of the Jackson State University Development Foundation, Inc., Jackson State officials determined that the Commissioner's Fund did, in fact, owe the foundation $12,565. However, the Commissioner's Fund had expended the funds, and thus did not have the resources available to repay the funds immediately. IHL and Jackson State officials negotiated a repayment schedule wherein Jackson State does not have to pay its annual assessment from the Commissioner's Fund until it has recouped its $12,565.

IHL officials maintain that they made every effort to repay the funds at the time they were inadvertently transferred by Jackson State officials. Subsequently IHL officials decided to consider the amount a contribution from the Jackson State University Development Foundation, Inc., to the Commissioner's Fund. The funds were accounted for as belonging to the Commissioner's Fund and available for expenditure at the Commissioner's discretion.

Presently IHL and Jackson State officials acknowledge that the $12,565 transferred to the Commissioner's Fund did in fact belong to the Jackson State University Development Foundation, Inc. The officials have agreed to a repayment schedule. Presently, the Commissioner's Fund owes the Jackson State foundation $8,767.

As a result of these activities, the Jackson State University Development Foundation, Inc., and its donors have not had the benefit of $12,565 and the investment earnings that would have accrued on these funds (an estimated $1,257) during this three-year period that it was used by the Commissioner's Fund. On the other hand, IHL officials showed poor fiduciary responsibility by expending the funds with knowledge that they did not belong to the Commissioner's Fund, particularly since some of the funds were spent on frivolous items such as an IHL staff Christmas party.

Reporting and Disclosure

- *IHL officials have not administered the Commissioner's Fund in accordance with Internal Revenue Service laws and regulations.*

As stated earlier, the Commissioner's Fund was established in December 1987, and the Mississippi Resource Development Corporation was reactivated to serve as a mechanism for housing the Commissioner's Fund. Internal Revenue Code Section 6033 requires tax-exempt organizations to file annual information returns as prescribed by Internal Revenue Service regulations. Internal Revenue Service regulations require that most organizations that are exempt from income tax under section 501(a) of the Internal Revenue Code file annual information returns on Form 990, Return of Organization Exempt from Income Tax, if their annual gross receipts are normally more than $25,000.

IHL officials received a inquiry from the Internal Revenue Service in March 1990 regarding the status of the nonprofit corporation. The inquiry requested information about why the nonprofit corporation had not filed an annual information return (Form 990) for 1988. IHL officials responded to the inquiry by stating that the nonprofit corporation's annual total revenues for FY 1988 had not exceeded $25,000, therefore Mississippi Resource Development Corporation was not required to file a Form 990. After responding to this inquiry, IHL officials have assumed that they were not

required to file information returns with the Internal Revenue Service in the future.

As reflected in Exhibit 6, page 11, Commissioner's Fund revenues have routinely exceeded $25,000 annually since FY 1988, the fund's initial year of operation. In addition, the Mississippi Resource Development Corporation receives grant funds from the federal Office of Naval Research. These funds are passed on to one of the universities for research. However, these funds would be considered revenue of the corporation for purposes of Internal Revenue Service regulations and laws. Grant funds totalled $2.7 million for fiscal year 1991 and $1.6 million for fiscal year 1992.

Internal Revenue Service regulations provide that any organization that is required to file Form 990 but does not do so on or before its due date, including extensions, could be subject to penalties. Penalties can amount to $10 per day for each day the return is late up to a maximum of $5,000. The penalties are not charged if reasonable cause for failure to file can be shown. Such penalties, if assessed, would be very substantial considering the relatively small amount of funding provided to the Commissioner's Fund.

- *The Commissioner's Fund audit for the three-year period July 1, 1988, through June 30, 1991, was not performed in accordance with generally accepted auditing standards.*

IHL officials authorized a Jackson certified public accountant to perform an audit of the Commissioner's Fund for the three-year period ending June 30, 1991. The auditor issued a report dated March 18, 1992. The contract (engagement letter) between the auditor and the Commissioner was dated March 11, 1992. The Commissioner did not sign the contract until March 24, 1992, one week after the date of the auditor's report.

PEER reviewed the audit report and determined that the report itself does not meet generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants. *Statement on Auditing Standards Number 58* was issued by the American Institute of Certified Public Accountants in April 1988 and was made effective for reports issued on or after January 1, 1989. This standard substantially changed the format and and wording of auditor's reports. The auditor's report issued on the financial statements of the Commissioner's Fund excluded terminology and statements necessary to be in compliance with current standards. Instead the report was presented under old standards. The auditor did not prepare a management letter or any other form of communication regarding any internal control weaknesses.

Also, the audited financial statements of the Commissioner's Fund do not reflect a liability relating to the amount owed to the Jackson State

University Development Foundation, Inc., as presented in the previous finding on page 15. Thus the financial statements are not fairly presented because the missing liability would have an obvious material effect on the financial statements.

IHL officials stated that they contracted with this auditor because of the low fee that he had agreed to charge for the engagement ($500). They maintain that because of the relatively small size of the fund, they could not afford to pay too much for an audit. As a result, IHL officials received an audit that is not up to standards and did not disclose an obvious unrecorded liability. It appears that the primary objective of IHL officials was to obtain something that could be referred to as an audit at the lowest possible cost, rather than attempting to obtain a full-scope and standard audit.

University Foundations

Background

Ten university foundations are associated with Mississippi's eight public universities (see Exhibit 8, page 20). The foundations vary in size and to some extent in the way they are administered by the respective universities. However, each was established solely to benefit the respective university with which it is affiliated. All have incorporated and, with the exception of one, have been granted tax-exempt status by the Internal Revenue Service. Contributions to each are generally considered to be deductible by donors for income tax purposes.

Purpose of the Foundations

Each foundation's primary purpose is to serve as a fundraising agent for its affiliated university. In addition, university officials, including chief executives, also perform fundraising activities for university foundations. University chief executive officers routinely told PEER staff that fundraising was one of their primary job responsibilities. These foundations, as agents, represent the primary mechanism for fundraising activity for Mississippi's public universities.

Funding of the Foundations

When soliciting donations, university officials generally instruct donors to make their donations payable to the respective university-affiliated foundations. Exhibit 9, page 21, reflects the flow of donations through a typical public university foundation in Mississippi. From a donor's perspective the contribution is made to a particular university in response to a solicitation by that university and the role of the foundation becomes that of a trustee. The foundation holds funds on behalf of a university that were donated under the assumption that the university would be the ultimate recipient. Foundation officials (who are in most cases university officials) determine when and whether their respective university will receive the donated funds. Donated funds are invested and maintained in the name of each respective foundation, and distributions are made to universities at the discretion of foundation officials.

Donors typically make one of three types of contributions to a university foundation:

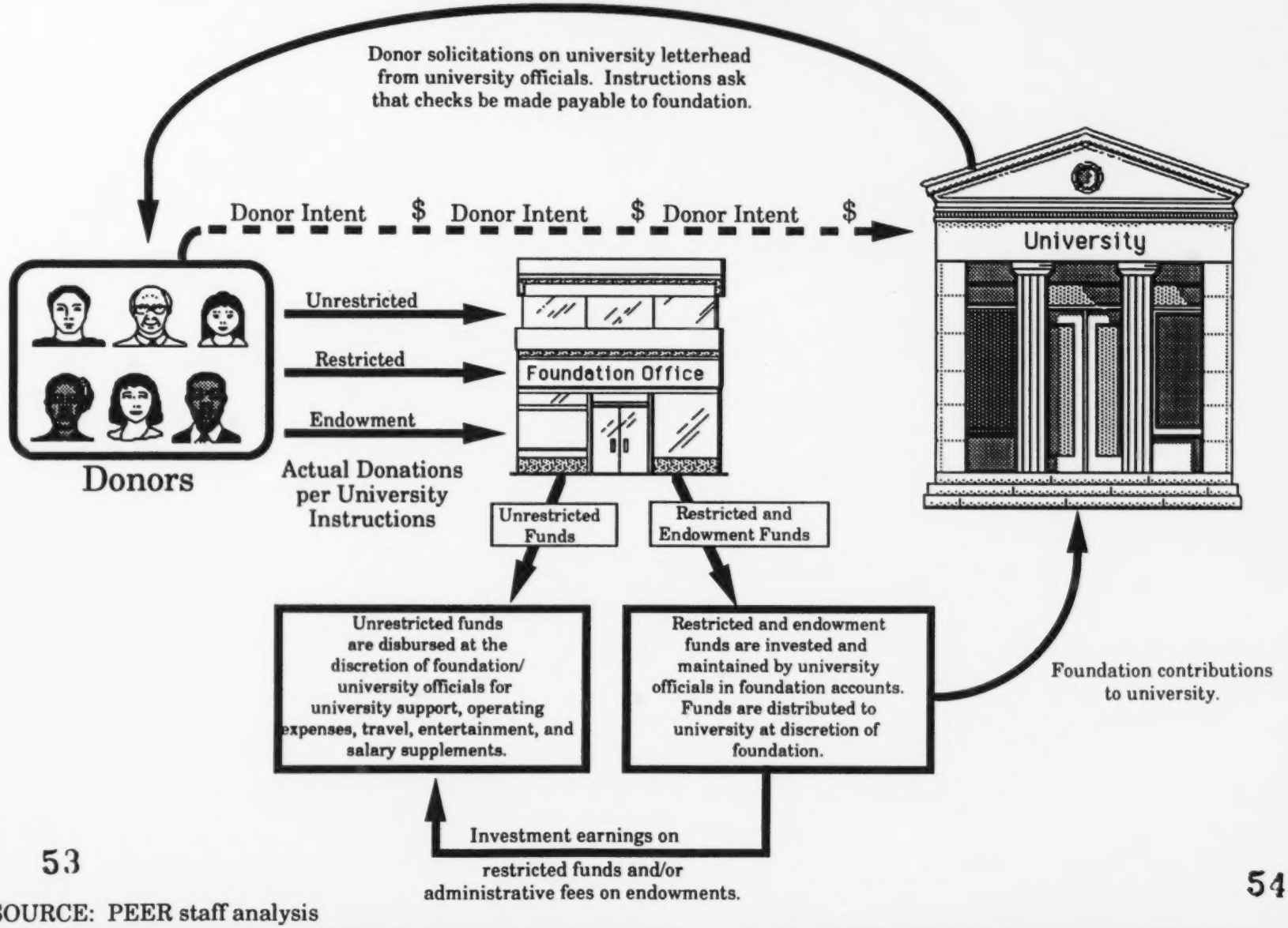
Exhibit 8

Schedule of Mississippi's Public University Foundations

University and Foundation(s)	Date Incorporated	Total Assets 6/30/92
Alcorn State University		
Alcorn State University Foundation, Inc.	1973	$4.22 million
Delta State University		
The Delta State University Foundation, Inc.	1967	$2.42 million
Jackson State University		
Jackson State University Development Foundation, Inc.	1969	$4.75 million
Mississippi State University		
Mississippi State University Development Foundation, Inc.	1962	$40.23 million
The Bulldog Club	1974	$3.4 million
Mississippi University for Women		
The Mississippi University for Women Foundation	1965	$5.90 million
Mississippi Valley State University		
Mississippi Valley State University Foundation	1970	$97,831
University of Mississippi		
The University of Mississippi Foundation	1973	$44.26 million
Ole Miss Loyalty Foundation, Inc.	1969	$.65 million
University of Southern Mississippi		
University of Southern Mississippi Foundation	1959	$10.83 million

SOURCE: PEER interviews of university officials and analysis of foundation financial records.

Exhibit 9
Flow of Donations through Mississippi's Public University Foundations


Donor solicitations on university letterhead from university officials. Instructions ask that checks be made payable to foundation.
Donor Intent $ Donor Intent $ Donor Intent $
University
Unrestricted
Restricted
Endowment
Foundation Office
Donors
Actual Donations per University Instructions
Unrestricted Funds
Restricted and Endowment Funds
Unrestricted funds are disbursed at the discretion of foundation/ university officials for university support, operating expenses, travel, entertainment, and salary supplements.
Restricted and endowment funds are invested and maintained by university officials in foundation accounts. Funds are distributed to university at discretion of foundation.
Foundation contributions to university.
Investment earnings on restricted funds and/or administrative fees on endowments.

SOURCE: PEER staff analysis

Unrestricted: Donor places no restriction on the use of funds. Foundation and/or university officials have full discretion regarding the use of the donation.

Restricted: Donor places restriction on use of donation and foundation must comply with externally restricted purpose.

Endowment: Generally, donor only permits expenditure of investment income and requires that principal be retained intact.

Unrestricted donations to a university foundation rarely pass directly through the foundation to the university. University officials use these funds for a variety of foundation-related expenses, including: travel, entertainment, fundraising expenses, salary supplements/benefits for university officials, and operating expenses of the foundation. University officials repeatedly stated the importance of and need for unrestricted funds to operate the foundations. Unrestricted funds represent the only type of funds which foundation/university officials have discretion to spend.

Findings

PEER sought to review the relationships between Mississippi's eight public universities and their respective foundations. PEER reviewed the IHL Board of Trustees' management and control over the relationships between universities and their respective foundations, the activities and responsibilities of university officials with regard to foundations, the funding of foundation operations, and the use of unrestricted funds by foundations.

Although this report presents findings related to university relationships with their foundations, PEER's review is not meant to and does not criticize the need for donations from business and individuals on behalf of state universities. To the contrary, PEER recognizes the very critical nature of such donations to Mississippi's universities and the fact that these funds can be used to provide educational opportunities for those who might not otherwise have them, to keep and attract outstanding faculty members, and to help with other needs of universities. Thus PEER sought to review the manner in which universities solicit, account for, and spend funds donated to their foundations to see if funds are being spent in the best interest of the respective universities.

As of June 30, 1992, seventy-seven percent of endowments on behalf of Mississippi's public universities were held by nonprofit corporations that are partially funded with state resources and staffed by state employees but not considered subject to state oversight (see Exhibit 10, page 24).

University officials direct virtually all fundraising efforts to the university foundations. The majority of endowments at all but one of Mississippi's public universities are held by university foundations (see Exhibit 11, page 25). PEER first identified this situation in a 1990 report, *A Review of Cash Management Policies, Procedures, and Practices of Mississippi's Institutions of Higher Learning*. Since June 30, 1989, the net assets of these university foundations have increased by $38.8 million, six times as much as university endowments have increased during the same period (see Exhibit 12, page 26).

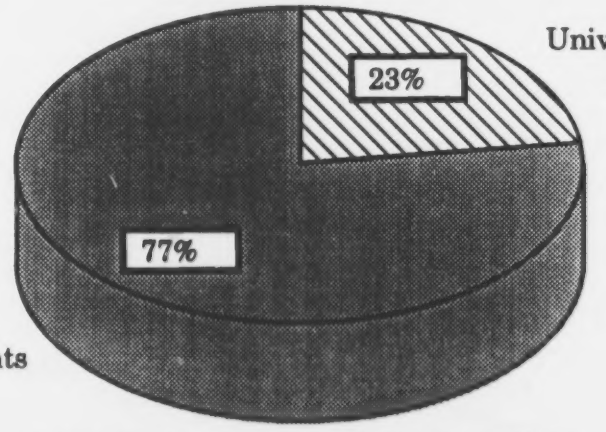
Each of the ten foundations is located on a university campus and staffed by university personnel. Typically, the foundation director is also the director (or vice president, etc.) of development or institutional advancement. These individuals report either directly or indirectly to the respective university chief executive officers. In many cases, foundation directors stated that they work for the foundation board of directors. While PEER understands that they are responsive to the foundation boards of directors, it is quite clear that they are employed by IHL and serve at the will and pleasure of the respective university chief executive officers.

University foundations receive a significant amount of funding from the public universities. Typically, universities provide office space, utilities, equipment, and personnel to operate the foundation. PEER estimates that universities provided at least $1.77 million in state funds for the operation of university foundations during fiscal year 1992, while foundation funds provided $1 million for operating expenses of the foundations. PEER's university cost estimate is conservative, as it does not include costs of university administrators such as the chief executive officers and others (vice presidents, etc.) that spend a significant amount of time on foundation activities such as fundraising and administrative matters.

In interviews with PEER staff, university officials consistently insisted that foundation operations are "private." University officials interpret "private" to mean that university foundations are nongovernmental entities and not subject to state oversight. They justify the expenditure of state funds for the operation of the foundations based on the fact that foundations collect millions of dollars on behalf of the universities on an annual basis. University officials also contend that subjecting university foundations to state oversight would jeopardize the privacy of donors. The most common reason cited by university officials for excluding foundation operations from state oversight is the need to be able to make expenditures that might not otherwise be permissible under state law.

Exhibit 10

Mississippi Public Universities
Comparison of Endowments - University and Foundation
As of June 30, 1992



University Endowments
$24.17 million

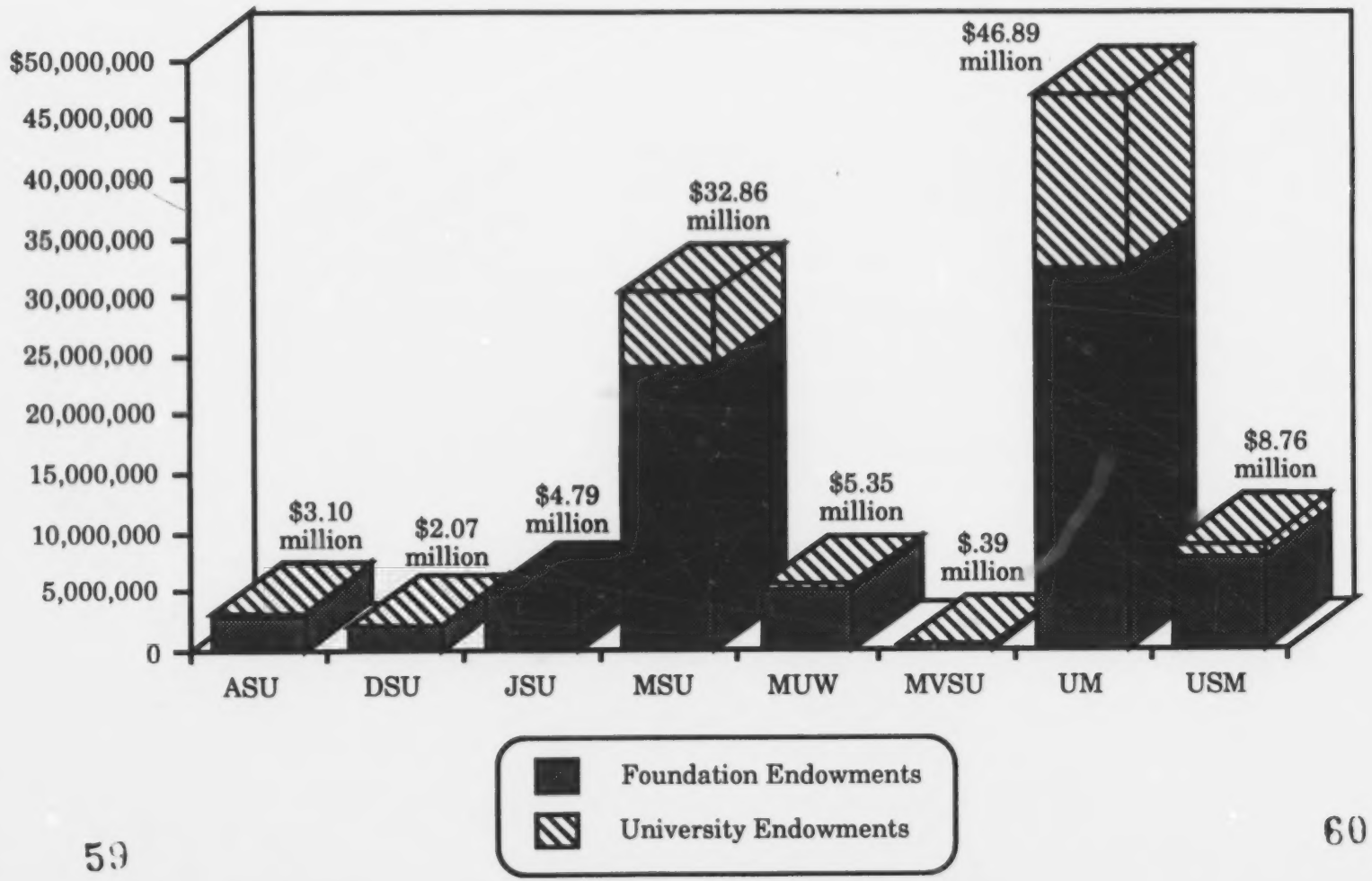
Foundation Endowments
$80.04 million

Total Endowments -- $104.21million

SOURCE: PEER analysis of university and foundation financial data.

Exhibit 11

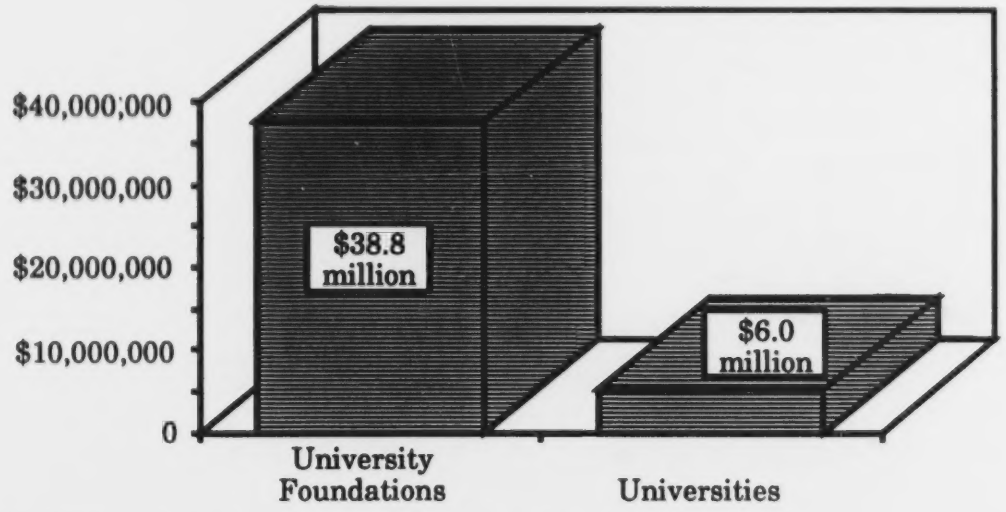
Mississippi Public Universities
Total Endowments Held for Each University
As of June 30, 1992



SOURCE: PEER analysis of university and foundation financial records.

Exhibit 12

Comparison of Increase in Foundation Net Assets to Increase in University Endowments June 30, 1989, to June 30, 1992



SOURCE: PEER analysis of university and foundation financial records.

The need to protect donor identity is understandable and represents an area in which the PEER Committee is in complete agreement with IHL and university officials. However, PEER notes that university officials expend significant time and money to provide recognition to most of their donors through establishment and publication of giving clubs, presentation of plaques, annual dinner parties, and press releases. One university foundation director stated that nine out of ten donors desire public recognition for their contributions. PEER understands and agrees with the need for donor privacy, but does not see this as the primary reason that university officials prefer excluding university foundation operations from state oversight.

The PEER Committee also recognizes that university foundations are the vehicles through which donors provide millions of dollars to universities on an annual basis. However, these funds are actually provided by donors that were solicited by the universities to provide donations for the university's benefit. Thus it is clear that the foundations are not donating millions of dollars to the universities, but rather acting as a fiduciary by collecting donations on behalf of universities and transferring funds to the universities on a periodic basis. Donors, rather than foundations, are the true providers of millions of dollars to universities on an annual basis. PEER agrees that the use of state funds to operate university offices to raise funds for public universities is acceptable and necessary, though this does not in itself create a need for the fundraising operations to be excluded from state oversight.

The primary reason that university officials seek nongovernmental status for university foundations is so that universities can make expenditures that might not otherwise be permitted by state law, such as entertainment and gifts. University officials consistently expressed that entertainment and gift giving is necessary for successful fundraising. University officials also expressed that the general public "might not understand" the need for certain transactions, and these transactions should not be made public. One university president told PEER that most citizens of Mississippi would not understand the need to provide salary supplements for university administrators from foundation funds or the need to use foundation funds to entertain donors. Such an attitude by university officials is the precise reason that such activities by public employees should be subject to public scrutiny.

The Board of Trustees of the Institutions of Higher Learning fails to manage and control the activities of university officials with regard to university foundations.

In its 1990 review of cash management at the state's public universities, PEER cited a lack of controls over the relationship between universities and their respective foundations. The IHL Board of Trustees has taken no action to institute controls to insure that university officials

act in the best interest of their respective universities when managing university foundations. University officials raise millions of dollars annually for foundations in the name of the respective affiliated universities using state resources, but are not accountable for the activities of the foundations. University officials do not report foundation activities to the IHL board in any manner.

University and IHL officials do not feel a need to report foundation activities to the IHL board. University officials repeatedly stated that funds held by foundations are "private" and are only subject to the oversight of their respective boards of directors. University officials also contend that their foundations are audited annually (with the exception of Mississippi Valley State University) and such audits are sufficient evidence that the foundations are managed properly.

As stated earlier, MISSISSIPPI CONSTITUTION Section 213-A and MISS. CODE ANN. Section 37-101-1 place Mississippi's public universities under the management and control of the IHL Board of Trustees. Specifically, MISS. CODE ANN. Section 37-101-15 requires the board to:

> *(a) . . .exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter in possession, levied and collected, received, or appropriated for the use, benefit, support, and maintenance or capital outlay expenditures of the institutions of higher learning. . . .*
>
> *(b) . . .have general supervision of the affairs of all the institutions of higher learning, including the departments and the schools thereof. . . .have general supervision of. . . .the business methods and arrangement of accounts and records; the organization of the administrative plan of each institution; and all other matters incident to the proper functioning of the institutions.*

The statute clearly reflects legislative intent that the IHL Board of Trustees has sole authority over all funds collected for benefit or use of Mississippi's public universities. While this statute does not prohibit the delegation of that responsibility to a university foundation, it requires the IHL board to oversee such a relationship with an agent.

- *The IHL Board of Trustees' failure to control university foundations results in a lack of accountability for fundraising activities.*

Mississippi public university officials continually emphasize the importance of fundraising and the necessity of donations for survival of the universities. Without a doubt, fundraising is a critical function of the institutions of higher learning. As stated earlier, seventy-seven percent of

public university endowments ($80 million) are held by private university foundations, and university officials continue to direct virtually all fundraising efforts ($20.5 million for fiscal year 1992) through the foundations. University officials spent a minimum of $1.77 million in state funds during fiscal year 1992 to support the operation of the foundations. These facts cannot and should not be ignored by the IHL Board of Trustees.

University officials constantly express how important the foundations are to each university's existence. The fact is that each foundation's sole purpose for existence is to support its respective university. Without the universities, foundations have no purpose for existence. Because of this situation, the IHL board has obvious authority to exercise control over the relationships between universities and their respective foundations. If a foundation is to be permitted to raise and manage funds in the name of a university using university resources, it stands to reason that the university (and/or the IHL board) can place controls over the manner in which the foundation carries on such activities on behalf of the university. This is not to say that the IHL board should be involved in day-to-day management activities, but rather to see that all activities are generally carried out in the best interest of the universities.

- *University officials receive additional compensation from university foundations without IHL board authorization.*

Some university officials receive additional compensation from university foundations on an annual basis. The most significant benefits are provided to university chief executive officers (see Exhibit 13, page 30). Besides the additional compensation provided to chief executives, university foundations provided $133,869 in cash supplements to other university administrators and staff during fiscal year 1992. The recipients of the largest supplements from this group were the head football coaches at Mississippi State University and the University of Mississippi, who were paid additional amounts of $16,000 and $15,000, respectively (see finding, page 58). Despite the significant amount of additional compensation provided university officials from foundations, the IHL board has taken no official action to authorize such compensation.

University officials do not consider additional compensation provided by university foundations to be subject to IHL oversight because they consider foundation funds to be nongovernmental. Additional compensation is provided at the discretion of foundation boards of directors or by university presidents with authorization from foundation boards of directors. University officials stated that the IHL board is "aware of" the additional compensation and such awareness represents sufficient oversight.

Exhibit 13

Additional Benefits for University Chief Executives Provided by Private University Foundations Fiscal Year 1992

	Annual Salary Supplement	Life Insurance Policy Amount (Face Value)	Retirement Annuity (Face Value)
Alcorn State University			$17,000 at retirement
Delta State University		$300,000	
Jackson State University	*		
Mississippi State University	$66,200	$500,000	
Mississippi University for Women		$600,000	
Mississippi Valley State University			
University of Mississippi	$25,000		
University of Southern Mississippi		$500,000	

NOTE: University presidents receive use of an automobile but do not maintain adequate records to reflect the value of personal use.

* Jackson State University's president's annual salary supplement of $10,000 begins in FY 1993.

MISS. CODE ANN. Section 37-101-15 (f) in part provides that:

The board shall have the power and authority to elect the heads of the various institutions of higher learning and to contract with all deans, professors, and other members of the teaching staff, and all administrative employees of said institutions for a term of not exceeding four (4) years.

IHL board policy 201.0502 provides that:

The Commissioner and other personnel employed by the board shall receive reasonable salaries commensurate with their duties and functions, the amount of which shall be fixed by the board.

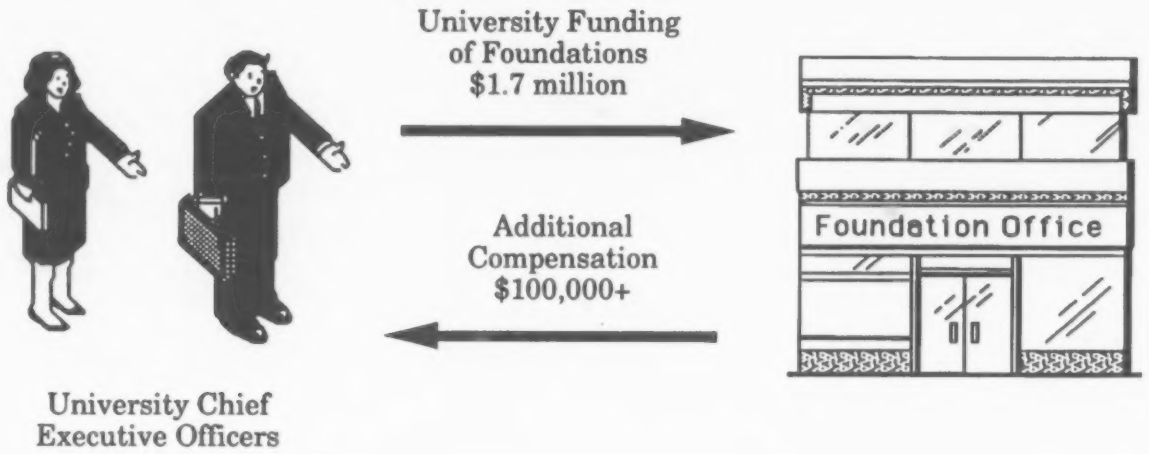
State law and IHL board policy require that the IHL Board of Trustees is authorized and required to fix the amount of compensation provided to university administrators through contracts with the administrators. PEER reviewed employment contracts between university officials and the IHL board and determined that the contracts do not authorize additional compensation for university officials.

Permitting employees to receive additional compensation without authorization or oversight creates the potential for conflicts of interest for university officials. In many cases, the same individuals that control university funding of foundation operations also receive compensation from the unrestricted operating funds of the foundation (see Exhibit 14, page 32). Without proper controls, university officials might not use unrestricted funds in the most efficient and effective manner in an effort to preserve funds for their own benefits. In addition, because university foundations receive a significant amount of university funding support for operations, unrestricted foundation funds are freed up to provide additional compensation for university officials. Thus university officials might be hesitant to reduce the funding of foundation operations at the expense of other university operations.

The IHL board's failure to authorize such additional compensation impedes the public's knowledge about the amount of compensation provided to these highly visible public servants. While the public has continually been reminded that its university chief executives are compensated at levels that are less than "average," such information only relates to their "base salaries" with no consideration or acknowledgement of additional compensation from university foundations. When a university's chief executive officer does not take the initiative to disclose foundation salary supplements, the problem is compounded. The Mississippi State University president has not disclosed his university foundation salary supplement ($66,200 for fiscal year 1992) to the Mississippi Ethics Commission in any of the last three years in violation of MISS. CODE ANN. Section 25-4-27.

Exhibit 14

Apparent Conflict Created by Foundations Providing Additional Compensation to University Officials



SOURCE: PEER analysis of university and foundation financial records.

- *University foundations have not been accountable for their activities, particularly the expenditure of unrestricted funds.*

Eight of Mississippi's ten public university foundations are governed by self-perpetuating boards of directors, as the board members are the only members of the nonprofit corporation and elect themselves. Donors are not members, although literature for one foundation (Loyalty Foundation at University of Mississippi) wrongly implies that a contribution makes a donor a member. The only way to become a member of a foundation board is to be nominated and elected by a current board; membership is limited.

This lack of accountability extends to university officials that are involved in foundation activities. They do not consider their foundation activities subject to any type of oversight other than that provided by the foundation board. The level of oversight by foundation boards varies greatly, and in a few cases, has been virtually nonexistent. In these cases, university officials have operated foundations with little oversight.

Because foundation boards are generally self-perpetuating, board members are not accountable to anyone but themselves, unlike corporate boards that are accountable to stockholders, government boards that are accountable to voters, and other nonprofit boards that are accountable to their appointing authorities. Foundation boards tend to be accountable for restricted or endowed funds, as these contain donor restrictions. University/foundation officials expressed a sincere sense of responsibility for handling restricted and endowed funds. However, the use of unrestricted funds is an area where the lack of accountability on the part of foundation boards and university officials creates the greatest potential for problems.

As stated earlier, a foundation's unrestricted funds are those on which the donor has placed no restrictions regarding their expenditure. Therefore, the expenditure of unrestricted funds is left to the discretion of a foundation board of directors. While university officials are quick to point out that unrestricted funds make up a very small percentage of a university foundation's total expenditures, unrestricted expenditures represent one hundred percent of foundation funds for which boards have total discretion regarding use.

For fiscal year 1992, Mississippi public university foundations spent $2.86 million in unrestricted funds (see Exhibit 15, page 34). These unrestricted expenditures do not include the $1.77 million in state funds contributed by universities. Unrestricted funds were spent in many cases without budgetary control by foundation boards, as only four foundations (Delta State University, Jackson State University, Mississippi State University, and University of Southern Mississippi) utilized board-approved budgets during fiscal year 1992. Subsequent to PEER's review, other

Exhibit 15

Mississippi Public University Foundations' Unrestricted Revenues and Expenditures Fiscal Year 1992

	Unrestricted Revenue FY 1992	Unrestricted Expenditures FY 1992
Alcorn State University Foundation, Inc.	$144,892	$66,422
The Delta State University Foundation, Inc.	122,448	79,631
Jackson State University Development Foundation, Inc.	74,621	46,510
Mississippi State University Development Foundation, Inc.	1,984,332	1,762,689
The Mississippi University for Women Foundation	272,895	268,732
Mississippi Valley State University Foundation	84,694	59,488
The University of Mississippi Foundation	239,867	264,677
University of Southern Mississippi Foundation	498,132	316,534
Total	$3,421,881	$2,864,683

SOURCE: PEER analysis of foundation financial statements.

foundations have begun compiling and approving budgets for unrestricted funds.

University foundations, with the exception of Mississippi Valley State University, receive annual financial audits. However, the audits are merely financial statement audits that provide an opinion as to whether the financial statements are fairly presented and do not address whether the foundations are managed in an efficient and effective manner in the best interest of the respective universities. PEER found the reports and their respective disclosures to be inconsistent among university foundations and, in most cases, they provide very little useful information as to how foundation funds are being spent. In one case (Loyalty Foundation of the University of Mississippi) the audit report is not considered acceptable under generally accepted auditing standards, similar to the audit performed for the Commissioner's Fund (see page 17). While PEER considers annual financial audits a necessary element of accountability for foundation boards, such audits do not provide assurance regarding the effective and efficient management of the foundations.

Only two university foundations (University of Mississippi and Mississippi State University) prepare annual reports that disclose significant detailed financial information beyond that presented in audit reports. The University of Mississippi Foundation annual report is made available to the public and discloses specific information relating to the expenditure of unrestricted funds, including the amount of administrative salary supplements. Such disclosure far exceeds that of other foundations, which generally do not distribute any financial reports outside of their own boards of directors. As a result, interested faculty, staff, donors, and alumni have no means of reviewing the activities of their university's foundation.

A lack of accountability by foundation boards, particularly with regard to the expenditure of unrestricted funds, could result in undetected mismanagement of foundation funds. The Jackson State University Development Foundation, Inc., had a deficit balance in its unrestricted fund of $575,783 as of June 30, 1992. In effect, restricted/and or endowed funds have been used for unrestricted expenditures. This represents only one example of the potential problems that are faced by foundation boards that are not accountable and subject to oversight.

- *University officials use university foundation funds to provide travel, entertainment and gifts for IHL board members and the Commissioner.*

PEER identified $24,252 in foundation expenditures during fiscal years 1991 and 1992 that were made specifically to provide entertainment, gifts, and entertainment-related travel for IHL board members and the

commissioner (see Exhibit 16, page 37). As PEER did not examine all foundation transactions for the two-year period, those expenditures identified do not necessarily represent all such expenditures during the period. In addition, due to different levels of detail in recordkeeping among university foundations, such expenditures were more identifiable at some universities than others. This finding is not meant to show that any one university foundation spends more or less than others for IHL board entertainment, but rather to point out that such expenditures are common among all university foundations.

The specific types of foundation expenditures vary, from trips to college football bowl games to Christmas hams. Mississippi State University officials spent $3,037 to fly IHL board members and spouses to a football game in Florida in September 1991; $2,004 to fly an IHL board member and spouse to a baseball game in Maine in May 1991; $3,321 for a trip to the Southeastern Conference basketball tournament for three IHL board members (and two spouses) in March 1991; and $3,638 for lodging and entertainment of ten IHL board members and the commissioner at the Liberty Bowl in December 1991. University of Mississippi officials spent $5,106 for transportation ($4,684 for air fare and $446 for mileage reimbursement) of eight IHL board members (and five spouses) and the Commissioner and his spouse to attend the 1991 Gator Bowl. University officials used bowl proceeds to pay for lodging and entertainment, which is addressed on page 64.

Expenditure of funds for gifts and entertainment for IHL board members is not limited to the larger university foundations, although they have more resources for such expenditures. The smaller university foundations also spend funds for gifts and entertainment for IHL board members. Mississippi Valley State University has by far the smallest foundation but spent $398 for Christmas gifts for IHL board members in 1991. Mississippi University for Women officials purchased watches for $350 for two retiring IHL board members in April 1992. All of Mississippi's public university foundations pay assessments from time to time to the Commissioner's Fund for IHL board functions, such as its 1990 annual Christmas party which cost $3,215.

As stated earlier, such foundation expenditures are made at the discretion of university officials. University officials repeatedly expressed the importance of entertainment to the process of fundraising. University officials consider the provision of gifts and entertainment to IHL board members and the Commissioner to also be a matter of routine. However, PEER noted at least one case in which university officials implied that they feel obligated to provide such benefits to IHL board members because all the others do the same.

The payment of gratuitous travel expenses, entertainment and gifts for IHL board members does not represent an effective use of foundation funds. Such expenditures do not represent fundraising expenditures,

Exhibit 16

Mississippi Public University Foundations
Selected Expenditures for Gifts, Entertainment, and Travel
Provided to IHL Board Members and Commissioner
Fiscal Years 1991 and 1992

	ASU	DSU	JSU	MSU	MUW	MVSU	UM	USM	Total
IHL Board*	$2,258			$5,063	$556	$1,032	$200	$918	$10,027
Nan McGahey Baker				$216					$216
Frank O. Crosthwait, Jr.				$216					$216
Bryce Griffis				$1,312	$175		$702		$2,189
Joe A. Haynes	$48			$224			$702		$974
Will A. Hickman				$259					$259
J. Marlin Ivey							$751		$751
William M. Jones		$220		$217			$702		$1,139
James W. Luvene							$256		$256
Diane M. Miller				$1,673			$190		$1,863
Cass Pennington				$230					$230
Sidney L. Rushing				$274			$325		$599
Dianne P. Walton				$3,664	$175		$751		$4,590
Ray Cleere				$216			$727		$943
Total	**$2,306**	**$220**	**$0**	**$13,564**	**$906**	**$1,032**	**$5,306**	**$918**	**$24,252**

NOTE: This table reflects only those expenditures identified by PEER during this review. PEER did not examine all foundation transactions, and the level of detailed records varies among foundations. This table should not be considered as including all expenditures of this type for all public university foundations.

* Reflects expenses not accountable to individual board members.

SOURCE: PEER analysis of foundation financial records.

academic expenditures or operating expenditures. Based on the literature published by the universities regarding donated funds, donors are not notified that their funds are used for such purposes. The expenditures identified by PEER would fund up to five full one-year scholarships at most of Mississippi's public universities.

- *University officials do not comply with all applicable Internal Revenue Service laws and regulations for nonprofit corporations in the administration of Mississippi's public university foundations.*

PEER did not review public university foundations solely for the purpose of determining whether the foundations comply with all applicable Internal Revenue Service laws and regulations. However, as a part of its review PEER sought to analyze reporting and disclosure requirements for foundations, most of which are required by the Internal Revenue Service in order for an entity to maintain a tax-exempt status.

PEER found the following problems at university foundations regarding compliance with the applicable Internal Revenue Service laws and regulations:

-- university officials have not disclosed all information required in annual information returns filed with the Internal Revenue Service;

-- one university foundation has never applied for tax-exempt status with the Internal Revenue Service;

-- university officials do not disclose sufficient information regarding the deductibility of contributions that result in preferred seating at athletic events; and,

-- officials at one university have used the foundation as conduit to allow donors to provide gifts to individual university officials.

Inadequate Disclosure on Information Returns--PEER reviewed annual information returns (Internal Revenue Service Form 990, Return of Organization Exempt from Income Tax) filed by Mississippi's public university foundations during fiscal years 1991 and 1992 (when available). Each of the nine foundations reviewed (Mississippi Valley State University has not filed any returns) had at least one instance of inadequate disclosure of information required by the Internal Revenue Service (see Exhibit 17, page 39). None of the university foundations properly disclosed the fact that their respective universities provide staff and facilities at less than fair market value (at no charge in most cases).

University officials at five university foundations (Alcorn State University, Jackson State University, Mississippi State University,

Exhibit 17

Mississippi Public University Foundations
Analysis of Inadequate Disclosure on
Internal Revenue Service Form 990
Fiscal Years 1991 and/or 1992

University Foundation	*Inadequate Disclosure: Donated Services and Facilities*	*Inadequate Disclosure: Related Party Transactions*	*Inadequate Disclosure: Lobbying Expenditures*
Alcorn State University Foundation, Inc.	X	X	X
The Delta State University Foundation, Inc.	X		X
Jackson State University Development Foundation, Inc.	X	X	X
Mississippi State University Development Foundation, Inc.	X	X	X
The Bulldog Club	X		
The Mississippi University for Women Foundation	X		X
Mississippi Valley State University Foundation	*	*	*
The University of Mississippi Foundation	X	X	X
Ole Miss Loyalty Foundation, Inc.	X		
University of Southern Mississippi Foundation	X	X	X

* Mississippi Valley State University Foundation has not filed for and received tax-exempt status with the Internal Revenue Service. As such, Form 990's have not been filed.

SOURCE: PEER analysis of university foundation Form 990's.

University of Mississippi, and University of Southern Mississippi) did not disclose that the foundations transact business indirectly with board members (i.e., banking relationships). University officials failed to report expenditures for lobbying activities despite obvious expenditures (i.e., Commissioner's Fund assessments); however, the University of Southern Mississippi Foundation properly reported lobbying expenditures on its fiscal year 1992 Form 990.

Failure to Obtain Tax Exempt Status--The Mississippi Valley State University Foundation does not file annual information returns because university officials have not applied for and received tax-exempt status by the Internal Revenue Service, despite being incorporated as a nonprofit corporation with the Mississippi Secretary of State's Office since 1970. Failure to obtain a tax-exempt status from the Internal Revenue Service could result in recognition as a taxable entity and imposition of an income tax on the Mississippi Valley State University Foundation by the Internal Revenue Service. In addition, donor contributions would not be considered deductible by donors.

Failure to Disclose Limited Deductibility of Contributions--Four universities grant preferred seating at athletic events to individuals who make contributions to their respective universities' foundations (Delta State University, Mississippi State University, University of Mississippi, and University of Southern Mississippi). University officials consider the provision of preferred seating an incentive to attract donors and make significant efforts through university-generated literature to inform donors about preferred seating. However, PEER found no evidence that university officials make an effort to inform donors that because their donation results in preferred seating, that a portion of such contribution may not be deductible. To the contrary, university-generated literature generally implies full tax deductibility for such contributions.

Internal Revenue Code Section 170 (l), restricts deductions for contributions that result in preferred seating to a maximum of eighty percent of the amount contributed. The Internal Revenue Service places responsibility for notification of donors regarding such limitations on the soliciting entity in Revenue Ruling 67-246:

> *[T]he amount properly attributable to the purchase of admissions or other privileges and the amount solicited as a gift should be determined in advance of solicitation. The respective amounts should be stated in making the solicitation and clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.*

The Internal Revenue Service also states in the ruling that failure to inform donors fully could create difficulties for donors:

> *[A]ll charitable contribution deductions claimed with respect to payments made in connection with the particular event or affair will be subject to special scrutiny and may be questioned in audit of returns.*

University officials' failure to disclosure deductibility limits could result in additional tax, penalties and interest for donors.

The most extreme case of this failure to disclose is found at the University of Mississippi with regard to twenty-nine luxury boxes in the football stadium that are provided to donors for an annual contribution of $10,000 each. In addition to use of the luxury boxes, the foundation provides such donors with twelve to sixteen free tickets to each home football game. University officials do not deduct the value of the tickets nor an estimated value of the preferred seating when providing receipts to donors. Such receipts reflect the entire $10,000 as a contribution.

Use of Foundation to Provide Gifts for Individuals--In two instances, University of Mississippi officials permitted individuals to use the University of Mississippi Foundation to make gifts to university officials by making "contributions" to the foundation that were restricted to the benefit of specified university administrators. University officials knowingly allowed these transactions to occur.

Warner Alford, the University of Mississippi director of athletics, owns a membership in the Annandale Golf Club that was purchased with monies "contributed" to the University of Mississippi Foundation in 1985 by Annandale members who wished to provide Mr. Alford with a membership. Don Fruge', current vice chancellor for university affairs, was the foundation director at the time of the transaction. Mr. Fruge' authorized and allowed the receipt of thirteen separate checks from Annandale members and the issuance of a foundation check for $19,300 to the Annandale Golf Club to pay for the membership. The membership belongs solely to Mr. Alford, with neither the foundation nor the university having an ownership interest.

A similar transaction occurred in 1989 when an individual expressed an interest in providing a cash gift of $25,000 to the Chancellor and his immediate staff. Mr. Fruge' permitted the donor to prepare a check payable to the University of Mississippi Foundation. Upon receipt of the check, Mr. Fruge', with specific instructions from the Chancellor, authorized the issuance of three foundation checks: one for $15,000 to the Chancellor, one for $5,000 to Leone King (chancellor's administrative assistant), and one for $5,000 to Leslie Wyatt (vice chancellor). PEER also determined that the Chancellor signed the name of the foundation treasurer (vice chancellor for administrative affairs) on the checks to

expedite their issuance, although the Chancellor had no authority to sign foundation checks.

The Internal Revenue Service has ruled (Revenue Rulings 61-66 and 81-217) that the use of a nonprofit entity as a conduit to provide a gift to an individual disqualifies the deductibility of the payment because it represents a gift rather than a contribution. Thus University of Mississippi officials improperly used the university foundation to reflect gifts from one individual to another as contributions. Such actions could result in additional taxes or penalties for everyone involved (foundation, university officials, and donors).

Mississippi public university foundations routinely contract with businesses in which their board members have significant financial interests.

Six university foundations (Alcorn State University, Jackson State University, Mississippi State University, Mississippi Valley State University, University of Mississippi, and University of Southern Mississippi) contract with a business of at least one of their board members. In most cases, these relationships occur because a foundation uses a financial institution as a depository while a director or officer of the financial institution sits on the foundation board. The most extreme case is the Mississippi State University Development Foundation, Inc., which had 99.7% of its trust assets ($34.76 million) deposited with three financial institutions at June 30, 1992: Trustmark National Bank, Deposit Guaranty National Bank, and Hancock Bank. High-ranking officials with each of the three institutions also serve on the board of directors of the foundation.

Certain bank officials even serve on two foundation boards of directors at the same time, both of which conduct business with that bank.

- Alvis Hunt, vice chairman of the board of Trustmark National Bank, served as president of the Mississippi State University Development Foundation, Inc., and vice chairman of the Jackson State University Development Foundation, Inc., during fiscal year 1992.

- E. B. Robinson, chairman of the board of Deposit Guaranty National Bank, serves on the boards of Mississippi State University Development Foundation, Inc., and Jackson State University Development Foundation, Inc.

Such contractual relationships are not limited to banking relationships. The University of Southern Mississippi Foundation contracted for production of its annual report in 1992 with Godwin Advertising Agency, Inc., whose president is a University of Southern Mississippi foundation board member. The University of Mississippi

Foundation's annual audit for fiscal years 1990, 1991, and 1992 was performed by the national accounting firm of Arthur Andersen & Company while a partner in the firm served on the board of directors of the foundation.

This does not imply that any of the board members with business interests in foundation activities have committed any act that was meant to benefit themselves or their companies. Foundation/university officials prefer to have prominent business leaders on their boards, as they feel this lends to the credibility and business knowledge of the board as a whole. In the case of the University of Southern Mississippi Foundation's production of an annual report, university officials pointed out that the foundation board member's advertising firm produced the report at a very substantial discount.

Foundation boards need the membership of prominent business leaders; however, contracting with businesses in which foundation board members have a significant financial interest does not present an appearance of independence, particularly when foundations are funded partially with state funds. The Legislature clearly stated its intention about such relationships involving public servants in MISS. CODE ANN. Section 25-4-101:

> *Therefore, public servants shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of this trust and which will not reflect unfavorably upon the state and local governments.*

University/foundation officials contend that university foundations are nongovernmental, nonprofit corporations, and that board members (other than university officials) are not public servants. However, considering that universities have delegated virtually all fundraising and fund management responsibility to these foundations and provide funding for such activities, service as a foundation board member comes very close to that of a public servant. MISS. CODE ANN. Section 25-4-103 (o)(ii) defines a public servant as:

> *Any officer, director, commissioner, supervisor, chief, head, agent or employee of the government or any agency thereof, or of any public entity created by or under the laws of the state of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds.* [Emphasis added]

MISS. CODE ANN. Section 25-4-105 (2) provides that:

No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

Independence in appearance is as important as independence in fact when government service is involved, particularly when a fiduciary responsibility as significant as that of a foundation board member is involved. As stated earlier, foundation boards are responsible for $80 million in endowments and annual revenues in excess of $20 million, all of which is managed in a trust capacity on behalf of Mississippi's public universities.

University Athletic Programs

Background

Each of Mississippi's eight public universities has an athletic program that offers a variety of individual varsity sports (see Exhibit 18, page 46). The programs vary in size among the universities with Mississippi State University, the University of Mississippi and the University of Southern Mississippi operating significantly larger programs than the other five universities. The four largest universities account for their athletic programs as auxiliary operations (provide services to students and/or faculty/staff and charge a fee). The five smaller universities classify their athletic programs as student services within education and general operations.

Mississippi public university athletic programs generated total revenues of $35.2 million during the fiscal year ended June 30, 1992. Total expenditures for the same period were $33.6 million (see Exhibit 19, page 47). Mississippi State University's athletic program generated the most revenue ($13.3 million), while the Mississippi University for Women had the smallest program ($373,781 in total revenues). Football revenue (e.g., ticket sales, television, post-season revenue) represents the largest self-generated revenue category for most of the universities, while the related expenditures for football also represent the largest expenditure category (see Exhibit 20, page 48).

Athletic Programs' Reliance on Supplemental Funding

None of Mississippi's public university athletic programs are self-supporting. Mississippi's public university athletic programs rely on fee assessments against students as one of their primary funding sources, particularly the smaller universities (see Exhibit 20, page 48). Student fees represent 21.3 percent of the funding for all Mississippi university athletic programs combined. The most significant impact is at the smaller universities such as Delta State University where student fees represented fifty-three percent of the athletic department's total funding for fiscal year 1992. However, student fees are also very significant for the larger universities. Student fees provided 14.7% of the athletic department's funding for fiscal year 1992 at Mississippi State University and 14.3% at the University of Mississippi. Historically, universities have also relied on an annual transfer from their universities' operating funds (also known as education and general funds) to support their athletic programs.

The IHL Board of Trustees establishes the amount that can be assessed against students as an athletic activity fee. In addition, the IHL board also establishes the amount that universities can transfer from

Exhibit 18

Mississippi Public University Athletic Programs
Fiscal Year 1993

	BUDGET FY 1993	Football	Basketball	Baseball	Track	Tennis	Golf	Volleyball	Cross Country	Swimming	Softball
Alcorn State University	$1,448,375	M	M/W	M	M/W	M/W	M	W	M/W		
Delta State University	1,046,703	M	M/W	M		M/W	M		W	M/W	W
Jackson State University	2,113,454	M	M/W	M	M/W	M/W	M/W	W	M/W		
Mississippi State University	10,006,324	M	M/W	M	M/W	M/W	M/W	W	M/W		
Mississippi University for Women	429,921		W			W		W			W
Mississippi Valley State University	1,219,764	M	M/W	M	M/W	M/W	M/W	W	M/W		
University of Mississippi	10,669,210	M	M/W	M	M/W	M/W	M/W	W	M/W		
University of Southern Mississippi	5,548,701	M	M/W	M	M/W	M/W	M/W	W	M/W		
	$32,482,452										

M represents varsity sports offered to men, W to sports for Women, and M/W to sports offered to men and women.

SOURCE: PEER analysis of university athletic budgets.

Exhibit 19

IHL Summary of Athletic Revenues and Expenditures
Fiscal Year Ended June 30, 1992

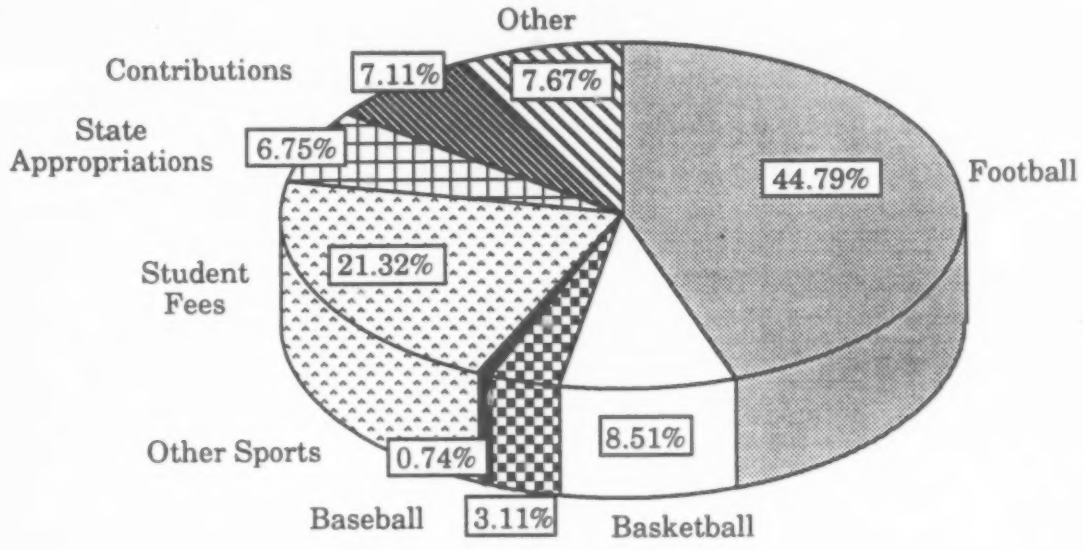
	Alcorn State University	Delta State University	Jackson State University	Mississippi State University	Mississippi University for Women	Mississippi Valley State University	University of Mississippi	University of Southern Mississippi	Combined Totals
Revenues									
Sports*	$440,301	$113,368	$1,000,955	$8,645,614	$3,418	$446,373	$7,102,897	$2,355,781	$20,108,707
Student Fees	546,175	560,557	1,017,625	1,959,033	222,106	349,716	1,422,675	1,424,376	$7,502,263
Foundations		0		1,100,614	10,134	0	740,000	651,500	$2,502,248
State Appropriations	272,652	384,815	414,730	0	123,937	509,874	361,000	308,750	$2,375,758
Other		410	39,126	1,633,672	14,186	8,635	343,433	658,792	$2,698,254
Total Revenues	$1,259,128	$1,059,150	$2,472,436	$13,338,933	$373,781	$1,314,598	$9,970,005	$5,399,199	$35,187,230
Expenditures									
Personal Services	$286,234	$385,320	$773,656	$3,118,411	$146,922	$387,262	$2,719,236	$1,870,143	$9,687,184
Travel	197,412	115,595	223,812	1,137,932	16,800	170,294	1,123,558	701,787	$3,687,190
Contractual Services									
Scholarships	567,664	372,463	709,357	1,677,128	144,491	505,331	1,744,549	1,058,820	$6,779,803
Other	112,552	132,380	518,762	3,851,790	40,199	76,833	1,884,580	1,068,938	$7,686,034
Commodities	76,093	47,901	238,951	1,220,295	20,297	88,574	788,837	578,382	$3,059,330
Capital Outlay	19,173	0	7,898	161,734	0	7,550	123,408	13,657	$333,420
Transfers		5,491		1,289,370	5,072	0	965,347	77,799	$2,343,079
Total Expenditures	$1,259,128	$1,059,150	$2,472,436	$12,456,660	$373,781	$1,235,844	$9,349,515	$5,369,526	$33,576,040
Excess Revenue Over (Under) Expenditures	$0	$0	$0	$882,273	$0	$78,754	$620,490	$29,673	$1,611,190

*E.g., ticket sales, television revenue.

SOURCE: IHL internal audit reports.

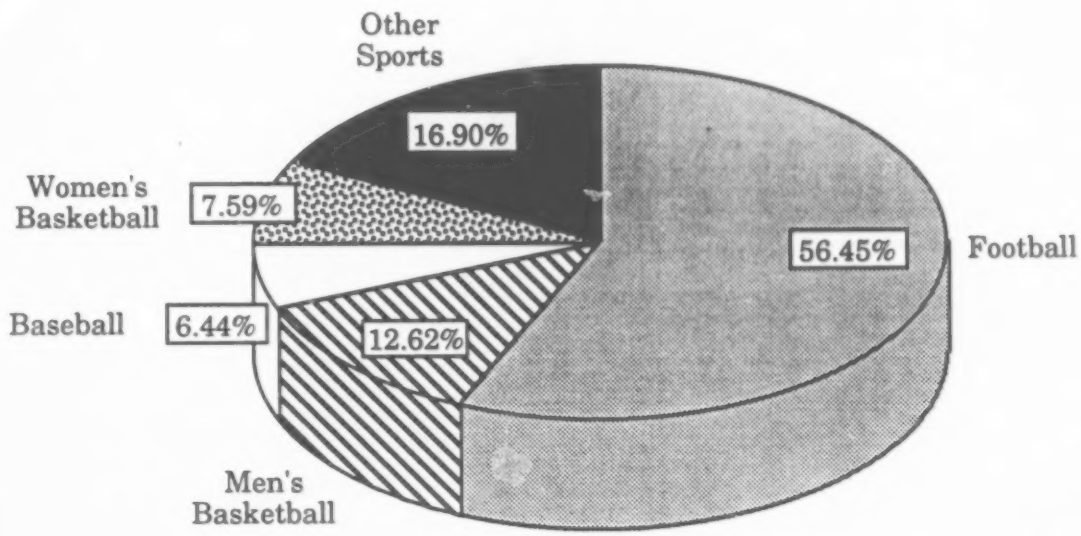
Exhibit 20
Mississippi Public University Athletic Programs
Analysis of Revenues and Expenditures
By Sport
FY 1992

Revenues



Total - $35,187,230

Expenditures



Total - $33,576,040

SOURCE: PEER analysis of university athletic budgets and financial statements.

education and general funds to the athletic department (see Exhibit 21, page 50). The three larger programs (Mississippi State University, the University of Mississippi and the University of Southern Mississippi) will operate without education and general supplements during fiscal year 1993. Without student fees and/or the transfer of education and general funds, each of the eight public university athletic programs would have ended fiscal year 1992 with a deficit.

While student fees represent a revenue for university athletic departments, they do not represent a revenue that is generated by actions of the athletic department (i.e., ticket sales and fundraising). Therefore, university officials should not contend that their athletic departments are self-supporting without any reliance on "state funds," because student fees represent nothing more than a portion of a university's tuition and fees for which payment by students, even those who do not participate in any way in an athletic program, is not optional.

Findings

PEER did not seek to review compliance with National Collegiate Athletic Association (NCAA) requirements nor those of any athletic conference with which Mississippi's public universities might be associated. The fact that a university complies with the requirements of the NCAA or its respective conference does not provide evidence that such university operates under the control of the IHL Board of Trustees in an effective, efficient manner and in compliance with state laws. University officials interviewed by PEER (particularly at the three largest state universities) generally consider athletics as *special* or *different* in relation to other university operations.

The IHL Board of Trustees provides very little direct oversight of athletics at Mississippi's public universities. The board leaves such oversight responsibility to the IHL staff and ultimately to university chief executive officers. At the beginning of its review, PEER noted that the board appeared to be exercising substantial oversight over athletic programs by reviewing and approving detailed athletic budgets on an annual basis. However, IHL staff later informed PEER that such budget approval as noted in IHL board minutes did not actually represent the establishment of specific budgetary limits for university athletic departments by the board, but merely acknowledged that the board had reviewed university athletic budgets. The IHL board's failure to exercise control over athletic department budgets is the basic cause of the following findings.

Exhibit 21

Mississippi Public Universities
Current Authorized Student Fees and Education and General Fund Supplements

	Annual Fee Per Student	E&G Funds - Supplement Limit
Alcorn State University	$175	$550,000
Delta State University	$175	$550,000
Jackson State University	$175	$550,000
Mississippi State University	$150	$400,000
Mississippi University for Women	$100	$200,000
Mississippi Valley State University	$175	$550,000
University of Mississippi	$150	$400,000
University of Southern Mississippi	$150	$400,000

SOURCE: IHL system administration office.

The IHL Board of Trustees does not manage and control all public university athletic revenues and expenditures as required by MISS. CODE ANN. Section 37-101-15.

MISS. CODE ANN. Section 37-101-15 (a) requires the IHL Board of Trustees to:

> *have and exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter in possession, levied and collected, received, or appropriated for the use, benefit, support, and maintenance or capital outlay expenditures of the institutions of higher learning. . . .*

The IHL board currently approves budgets for each university on an annual basis; however, the universities do not always include all athletic revenues and expenditures in their budgets.

IHL officials informed PEER staff that university athletic budgets represent such a small percentage of the overall IHL budget (three percent) that specific board authorization of these budgets is not warranted. As a result of the limited board oversight, the budgets actually prepared and submitted by university athletic departments to the IHL Board of Trustees are meaningless. IHL permits university athletic departments to spend as much as they want as long as they do not exceed their total revenues within a fiscal year. University officials can spend unanticipated revenues, such as post-season bowl game revenues, in any manner they please without budgetary control by IHL. For fiscal year 1992, university athletic department expenditures exceeded the amount reported to the IHL board in university budgets by a total of $2.5 million (see Exhibit 22, page 52).

The athletic directors at Mississippi State University, the University of Mississippi and the University of Southern Mississippi authorize transactions which result in the diversion of university athletic revenues. The University of Mississippi and the University of Southern Mississippi athletic directors divert athletic revenues into their university foundations, while the athletic director at Mississippi State University diverts athletic revenues into a company for which he serves as president.

- *The Mississippi State University athletic director diverts athletic department revenues into a company of which he is president and a 25% owner.*

Larry Templeton, athletic director at Mississippi State University, is also a stockholder, board member and president of a for-profit company, Bulldog Communications, Ltd. As Mississippi State University's athletic director, Mr. Templeton has granted Bulldog Communications, Ltd., "all rights for the production of Mississippi State coaches' television shows as

Exhibit 22

Mississippi Public Universities Athletic Department Expenditures
Budget vs. Actual
FY 1992

	Budgeted Expenditures	Actual Expenditures	Actual (Over) Under Budget
Alcorn State University	$1,448,225	$1,259,128	$189,097
Delta State University	1,005,280	1,059,150	(53,870)
Jackson State University	2,399,356	2,472,436	(73,080)
Mississippi State University	9,362,930	12,456,660	(3,093,730)
Mississippi University for Women	365,156	373,781	(8,625)
Mississippi Valley State University	1,144,375	1,235,844	(91,469)
University of Mississippi	9,915,412	9,349,515	565,897
University of Southern Mississippi	5,395,000	5,369,526	25,474
Totals	$31,035,734	$33,576,040	($2,540,306)

SOURCE: PEER analysis of university athletic department budgets and financial statements.

well as delayed television broadcast rights of football and basketball games." Included is the right for Bulldog Communications, Ltd., to sell advertising for such shows. While the contract calls for payment of "coaches talent fees" by Bulldog Communications, Ltd., no provision is made for compensation of Mississippi State University for such television rights. Mr. Templeton operates Bulldog Communications, Ltd., from the offices of the Mississippi State University athletic department utilizing university staff.

Mr. Templeton diverted $457,062 in athletic department revenues into Bulldog Communications, Ltd., during the fiscal year ended April 30, 1992. Of this amount, $305,000 represented funds restricted by donors for athletics and held in the Mississippi State University Development Foundation, Inc. The athletic director merely requested the transfer of the funds to Bulldog Communications, Ltd., and university staff at the foundation made the transfers without question, due to the discretion allowed the athletic director with such funds by the foundation board of directors.

Mr. Templeton informed PEER staff that funds from the university foundation are transferred to Bulldog Communications, Ltd., to provide additional compensation to selected coaches in football, basketball and baseball, per donor restrictions. Mr. Templeton transfers the funds from the foundation to his company and then provides additional compensation for the coaches (see Exhibit 23, page 54).

In addition to university foundation funds, Mr. Templeton also diverts other revenues to Bulldog Communications, Ltd. Between May 1, 1991, and April 30, 1992, Mr. Templeton diverted $59,562 in funds that were payable to Mississippi State University for radio broadcasts of Mississippi State University sporting events. Mr. Templeton also diverted $25,000 in funds intended for Mississippi State University as payment by an advertiser for use of its product by Mississippi State University athletes during competition.

PEER reviewed expenditures of Bulldog Communications for the twelve months ended April 30, 1992. As stated earlier, the majority of expenditures were for additional compensation for Mississippi State University coaches. However, PEER also noted disbursements for bonuses for seven administrative staff ($1,000 each) in the athletic department, travel and entertainment expenses of the athletic director, and gifts given by the athletic director ($3,400 for cowboy boots for the coaching staff on one occasion).

Mr. Templeton also operates Bulldog Publications, Inc., a subsidiary of Bulldog Communications, Ltd., from the offices of Mississippi State University's athletic department. Bulldog Publications, Inc., publishes *Dawgs' Bite*, a tabloid that covers Mississippi State University Athletics. Mississippi State University athletic department staff write and produce the tabloid forty times a year as a part of their athletic department

Exhibit 23

Bulldog Communications, Ltd.
Additional Compensation of Mississippi State University Athletic Department Staff
May 1, 1991 to April 30, 1992

Amount	*Payee*	*Description*
$217,742.00	Head Football Coach	Additional compensation - cash*
20,000.00	Head Football Coach	Life insurance policy
4,830.00	Head Football Coach	Disability insurance
8,000.00	Head Baseball Coach	Additonal compensation - cash
7,500.00	Head Baseball Coach	Life insurance
20,000.00	Head Basketball Coach	Additional compensation - cash
7,500.00	Head Basketball Coach	Life insurance policy
12,000.00	Assistant Football Coach	Additional compensation - cash
7,000.00	Former Head Football Coach	Additional compensation - cash
7,000.00	Various athletic department administrative staff	Bonuses/supplements
2,292.03	Head Football Coach & Athletic Director	Country club dues & expenses
$313,864.03		

* Includes $100,000 transferred by the Mississippi State University athletic director from the foundation to Host Communications for compensation of the head football coach.

SOURCE: PEER analysis of Bulldog Communications, Ltd., financial records and interviews with Mississippi State University staff.

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responsibilities. Bulldog Publications, Inc., does not have any personnel costs, as they are paid by Mississippi State University. *Dawgs' Bite* has an annual paid circulation of approximately 3,700 with annual total revenues estimated at $111,000. All revenues are deposited to accounts of Bulldog Publications, Inc.

Excess revenues over expenses of Bulldog Communications, Ltd. are retained by the company as retained earnings (stockholder's equity). At April 30, 1992, the company's retained earnings balance was $76,482, all of which was held as cash in the company's bank accounts. The retained earnings balance represents funds that should belong to the university, as the balance was generated by revenues that were originally earmarked for the university and the work was performed by university personnel. However, such funds belong to Mr. Templeton and other stockholders of the company.

Mr. Templeton considers Bulldog Communications, Ltd., as an extension of the university's athletic department. However, he considers the activities of the company not to be subject to outside oversight. He stated that most people would not understand the circumstances and amounts of compensation paid to coaches, and that the company provides a mechanism to keep such information out of the public eye. Mr. Templeton expressed strong feelings about coaches' compensation and accused PEER staff of "providing information to other schools" regarding compensation of Mississippi State University coaches because of their recent athletic success.

When PEER first became aware of Bulldog Communications, Ltd., and inquired about the company, Mr. Templeton told PEER staff that he had nothing to do with the company and that it was located in Greenwood, Mississippi. PEER staff checked corporate records at the Mississippi Secretary of State's office and determined that the company address was the same as that of the Mississippi State University athletic department and that Mr. Templeton was the president and a member of the board of directors. PEER again inquired about the operations of Bulldog Communications, Ltd., and asked to see the records. Mr. Templeton refused to provide access. Subsequent to presentation of a PEER Committee subpoena, Mr. Templeton provided access to the company's records which were in fact located within the Mississippi State University athletic department. Mr. Templeton and his administrative assistant sign checks, make deposits, and transact all routine administrative business of the company.

PEER staff met with the Mississippi State University president to determine if he had knowledge of the athletic director's involvement with Bulldog Communications, Ltd. The president acknowledged that he was aware of Bulldog Communications, Ltd., but did not acknowledge that he was aware that the athletic director had received any benefits from the company. The president did not seem concerned about the activities of the

athletic director and Bulldog Communications, Ltd. The university's internal auditor was also very defensive of the athletic director and Bulldog Communications, Ltd., despite stating that she had no jurisdiction over the company. The internal auditor repeatedly questioned PEER's authority to inquire about the company. (The internal auditor was one of several university administrators provided with free trips to the 1990 Liberty Bowl by the athletic department, thus PEER questions the independence of the internal auditor regarding athletic department matters.)

The actions of the athletic director of Mississippi State University conflict with MISS. CODE ANN. Section 25-4-105 (1), which states:

> *No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.*

- *The University of Mississippi athletic director diverts athletic department revenues into a nonprofit athletic foundation from which he receives a housing allowance.*

Warner Alford, athletic director at the University of Mississippi, is also a board member of the Ole Miss Loyalty Foundation, a nonprofit corporation established to support the university's athletic program. In addition to overseeing the university's athletic department, Mr. Alford is also administratively responsible for the operations of the foundation. Mr. Alford has used his position as athletic director to divert university athletic revenues to the foundation.

Mr. Alford diverts funds from advertisers into the athletic foundation rather than the university. During the year ended June 30, 1992, Mr. Alford directed the diversion of $35,732 in funds paid by advertisers for association with the athletic program (e.g., scoreboard advertising, game program advertising) to the athletic foundation. A portion of the funds is used to provide additional compensation to the head football coach ($20,000). The other funds remain with the foundation to be spent at the discretion of university officials with no oversight. PEER noted that effective July 1, 1992, the athletic foundation began paying a housing allowance of $1,000 per month to Mr. Alford.

Mr. Alford has made arrangements with the Mississippi Network, Inc., to compensate head coaches for their respective radio shows related to broadcasts of University of Mississippi football and basketball games. As a result, the Mississippi Network, Inc., pays $105,000 directly to University of Mississippi head coaches ($75,000-football, $20,000-men's basketball, $10,000 women's basketball) on an annual basis. These transactions are not reflected in any manner on the records of the University of Mississippi athletic department.

During interviews with PEER staff, Mr. Alford stated that he thought that his actions were normal and consistent with those of other institutions. He did not believe that the diversion of university funds created any problems.

The actions of the athletic director of the University of Mississippi may also be in conflict with CODE Section 25-4-105 (1). In any case, the diversion of public funds from a public entity violates the public trust. The IHL Board of Trustees' policy section 1201.01 states in part:

> *The Board of Trustees of Institutions of Higher Learning recognizes that the integrity of Board members, staff, Institutional Executive Officers and employees in the conduct of the public's business should be unquestioned and of the highest order.*

The IHL policy also restates MISS. CODE ANN. Section 25-4-105 (1) and declares that all IHL officials and employees shall observe such laws.

- *The University of Southern Mississippi athletic director diverts athletic department advertising revenues into the university foundation accounts over which he has full discretion.*

Bill McLellan, the University of Southern Mississippi athletic director, oversees a program known as the "Patron Eagles." Under this program supporters purchase a membership (one year-$12,000, three year-$10,000/year, and five year-$9,000/year) that entitles the participant to certain benefits. The program is geared primarily to businesses. In exchange for a membership, the athletic department provides advertising on a billboard located on the university campus, recognition in game programs, public address announcements at university athletic events, twenty-four season tickets to University of Southern Mississippi football, basketball, and baseball games (total of seventy-two season tickets), and preferred parking privileges at the games.

Mr. McLellan directs all funds from "Patron Eagle" members into an athletics account in the University of Southern Mississippi Foundation. Mr. McLellan has discretion to spend the funds in the foundation account at his discretion. During fiscal year 1992, the athletic department received $67,000 for "Patron Eagle" memberships and deposited this amount to the university foundation. Mr. McLellan considers the arrangement to be proper because the billboard on university property was constructed using funds from the athletics account in the foundation (unrestricted athletic donations).

Diversions of university athletic revenues to foundations at the University of Mississippi and the University of Southern Mississippi and to Bulldog Communications, Ltd. at Mississippi State University totaled at least $664,794 during fiscal year 1992. The IHL Board of Trustees' failure to manage and control all athletic department revenues results in less than full disclosure of athletic department activities at these institutions and could represent violations of state law by the university officials involved.

The IHL Board of Trustees' failure to control the actions of athletic directors in arranging compensation packages for head coaches may jeopardize the coaches with regard to state law.

During 1992 public university head coaches received at least $562,234 in compensation above the amount specifically authorized by the IHL Board of Trustees (see Exhibit 24, page 59). Most of the additional compensation was paid in cash and came from entities outside the universities. Head football and basketball coaches at Mississippi State University, the University of Mississippi and the University of Southern Mississippi received the largest amounts. Each of those head coaches receives funds for radio and television shows. Other sources of additional compensation include payments by sponsors for endorsements of products, foundation supplements, and sports camps. According to university athletic directors, the head coaches have separate contracts with these outside entities (e.g., radio networks, sporting goods companies).

University officials consider the payment of additional compensation to coaches by external entities to be routine. University officials, particularly athletic department officials, consider this method of payment proper as long as the university's president is aware of such compensation as required by the National Collegiate Athletic Association. Officials at Mississippi State University stated that providing additional compensation to coaches without such funds flowing through the universities is necessary to limit access to such information because "most people would not understand."

The IHL board's failure to control compensation of these coaches makes the process of IHL approval of contracts meaningless. IHL board-authorized salaries of head football coaches at Mississippi State University and the University of Mississippi ($90,000 for fiscal year 1993) represent less than fifty percent of the compensation that the coaches receive because of their respective positions. Athletic directors at these institutions assist coaches in obtaining additional compensation, yet the IHL board exercises no oversight over such arrangements.

This lack of control by the IHL Board of Trustees and actions of athletic directors in arranging such compensation packages for head coaches may be jeopardizing the coaches with regard to Mississippi state laws and the universities with regard to National Collegiate Athletic

Exhibit 24

Mississippi Public Universities
Additional Annual Compensation Provided to Head Coaches, 1992*

	Football	Men's Basketball	Women's Basketball	Baseball	Other	Totals
Alcorn State University	$3,700				$4,400	$8,100
Delta State University		$2,511	$9,549	$2,976	678	15,714
Jackson State University						0
Mississippi State University	203,190	50,500		25,000		278,690
Mississippi University for Women					2,491	2,491
Mississippi Valley State University						0
University of Mississippi	118,500	**	19,500	17,660	19,977	175,637
University of Southern Mississippi	30,000	37,500	7,000	3,000	4,102	81,602
						$562,234

Note: Does not include value of complimentary autos provided by auto dealers and auto insurance provided by athletic departments or university foundations.

* Some coaches are paid on a fiscal year basis, while others are paid on a calendar year basis.

** The University of Mississippi employed a new men's basketball coach during 1992. His anticipated additional compensation for fiscal year 1993 is $45,000.

SOURCE: PEER inquiry of university chief executive offices and analysis of university records.

Association (NCAA) regulations. As stated earlier, MISS. CODE ANN. Section 25-4-105 (1) provides that:

> *No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.*

These coaches receive additional compensation because of their positions as head coaches at the respective public universities. Sponsor endorsements and radio/television "talent fees" would not be available to these individuals were they not head coaches of the respective universities. Other public servants are not permitted to use their official positions to obtain additional compensation and PEER noted no exceptions in law for athletic coaches. University head coaches received such additional compensation with the knowledge and assistance of their respective athletic directors.

As stated earlier, PEER did not seek to measure Mississippi public universities' compliance with NCAA regulations; however, PEER did review selected NCAA regulations relating to compensation of coaches. The NCAA requires that institutional chief executive officers be aware of and approve all athletically-related income of an institution's coaches. The NCAA also prohibits a coach from receiving supplemental pay from an outside source, including the donation of cash from outside sources that is earmarked for a coach's income (or any athletic staff member).

Information on file with the president of Mississippi State University regarding additional compensation of Mississippi State's head football, basketball, and baseball coaches does not reflect all additional compensation currently provided. Bulldog Communications, Ltd., provides life insurance for each of the coaches (cost of insurance: football-$20,000, basketball-$7,500 and baseball-$7,500), disability insurance for the head football coach (annual cost $4,830), and payment of country club dues for the head football coach ($960 per year). The Mississippi State University Development Foundation, Inc., provides a housing allowance for the head football coach ($15,000 per year). None of these amounts are reflected in documentation submitted to the president of the university.

Mississippi State University and University of Mississippi athletic directors have each arranged for coaches to receive supplemental pay from outside sources. As stated earlier, the Mississippi State University athletic director provides life insurance to the head football, basketball, and baseball coaches; disability insurance to the head football coach; and country club dues for the head football coach through the athletic director's company, Bulldog Communications, Ltd. The University of Mississippi athletic director arranges for an annual supplement of $35,000 ($15,000 housing allowance and $20,000 cash supplement) for the head football coach and $12,000 for an annual housing allowance for himself. The $20,000

supplement represents funds deposited to the athletic foundation and earmarked for the head football coach.

While PEER does not make any assessment of whether such transactions are in compliance with NCAA regulations, PEER notes that the manner in which such transactions are handled (outside the university's recordkeeping system) raises questions about the transactions. University officials may be jeopardizing their institutions in an effort to provide additional compensation that is not open to public scrutiny.

Post-Season Bowl Games

Mississippi State University (December 1991), the University of Mississippi (January 1991) and the University of Southern Mississippi (December 1990) each appeared in a post-season football game during the two-year period ended June 30, 1992. Each university received revenue for its football team's post-season appearance (see Exhibit 25, page 62). Such events are expected to produce a significant amount of unanticipated revenue for athletic departments that claim to desperately need it in order to provide competitive athletic programs.

Post-season bowl game proceeds represent self-generated revenues for universities. However, this does not preclude such revenues from being considered public funds that belong to the respective universities and thus are subject to state laws and regulations for public funds.

The IHL Board of Trustees authorized a total of $282,843 in bonuses for athletic staff at Mississippi State University, the University of Mississippi and the University of Southern Mississippi for post-season bowl game appearances during fiscal years 1991 and 1992 in violation of Section 96 of the MISSISSIPPI CONSTITUTION.

The IHL Board of Trustees authorized bonuses for University of Mississippi athletic staff and University of Southern Mississippi athletic staff at it January 17, 1991, meeting and for Mississippi State University athletic staff at its January 16, 1992, meeting. Individual bonuses generally amounted to the equivalent of one month's salary and were paid to athletic staff (football coaches, trainers, athletic directors, sports information personnel, ticket office staff, secretaries, etc.) (See Exhibit 26, page 63.)

The payment of bonuses to athletic staff for participation in post-season bowl games is a longstanding tradition for Mississippi's public universities and is quite common among universities in other states. The IHL Board of Trustees approves such bonuses without discussion other than commending the participating universities.

Exhibit 25

Mississippi Public Universities
Bowl Game Revenues and Expenditures
Fiscal Years 1991 and 1992

	Revenues	Expenditures	Excess (Deficit) Revenues
Mississippi State University*	$525,506	$443,595	$81,911
University of Mississippi	498,602	499,374	(772)
University of Southern Mississippi	577,093	378,286	198,807
	$1,601,201	$1,321,255	$281,490

* Includes $70,485 in university foundation funds spent for bonuses, travel and entertainment.

SOURCE: University athletic department financial records.

Exhibit 26

Mississippi Public Universities
Bowl Bonuses Paid to Athletic Staff
Fiscal Years 1991 and 1992

University	Post-Season Revenue for University	Bonuses from Post-Season Revenue	Number of University Staff Paid Bonuses
Mississippi State University*	$525,506	$77,728	16**
University of Mississippi*	498,602	114,246	38
University of Southern Mississippi	577,093	90,869	39
	$1,601,201	$282,843	

* Excludes portion of post-season bowl proceeds distributed to other conference members.

** Mississippi State University's athletic director authorized payment of $35,869 in bonuses for twenty-nine additional staff from university athletic foundation funds.

SOURCE: University athletic department financial records.

However, Section 96 of the MISSISSIPPI CONSTITUTION provides that:

> *The legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made. . . .*

Courts have held that this constitutional prohibition applies to the Legislature and all subordinate state agencies created or controlled by it.

Besides being unconstitutional, the authorization of bonuses for one small segment of IHL's employees is inconsistent and unfair to other IHL employees and even other state employees. Apparently, employment by a public university athletic department represents the only state position that presents the potential for receipt of an annual bonus. Furthermore, the payment of these bonuses is largely contingent on the performance of these universities' student-athletes, which raises a question as to the reasoning for payment of such bonuses even if one disregards the legal prohibition.

Public university officials use public funds to provide entertainment and travel for university administrative staff and IHL board members in relation to post-season bowl games.

PEER reviewed expenditure records of Mississippi State University, the University of Mississippi, and the University of Southern Mississippi related to their respective post-season bowl game appearances during 1990 and 1991. In addition to providing travel and entertainment for the teams and support staff (e.g., coaches, trainers), the universities' athletic directors also authorized the expenditure of funds for travel and entertainment for athletic administrative staff, university administrative staff and IHL board members.

University athletic departments do not maintain records in sufficient detail to determine the exact amount spent by each university for non-essential staff travel and entertainment. However, PEER did note the numbers of the various types of staff for which lodging and other benefits were provided.

- Mississippi State University athletic officials authorized lodging, per diem, and mileage reimbursement for twenty-two administrative staff members of the athletic department for the 1991 Liberty Bowl (excludes expenditures from the university foundation for bowl-related travel and entertainment).

- University of Mississippi athletic officials authorized travel and entertainment expenditures for thirty-one athletic administrative staff (athletic director had two hotel suites), six members of the university athletic committee, three university vice-chancellors,

twelve IHL board members and the IHL commissioner for the 1991 Gator Bowl.

- University of Southern Mississippi athletic officials authorized travel and entertainment expenditures for ten athletic administrative staff, six university administrators and seven IHL board members for the 1990 All-American Bowl.

It is necessary for certain athletic administrators to travel in conjunction with athletic events. However, payment of travel expenses to other administrative staff (e.g., secretaries, bookkeepers) to these bowl games represented more of a reward than travel necessary for the fulfillment of duties. The same athletic staff members also received a bonus equivalent to one month's salary, as noted earlier (see page 61).

Post-season sporting events should represent a reward for student athletes, coaches and immediate support staff. In addition, such events are expected to produce a significant amount of unanticipated revenue for athletic departments that claim to desperately need it in order to provide competitive athletic programs. However, the expenditure of funds to provide travel and entertainment for non-essential administrative staff, university officials and IHL board members represents neither an effective nor an efficient expenditure of funds. PEER reviewed the total revenues and expenditures of the three bowl games and determined that inefficient use of the funds resulted in the University of Mississippi spending more than it made for its 1991 Gator Bowl appearance (see Exhibit 25, page 62).

Conclusion and Recommendations

Conclusion

As stated earlier, PEER did not focus its review on any particular university, foundation, athletic program or individual IHL/university staff member. PEER's primary focus in this review was the IHL Board of Trustees' management and control of the operations of the IHL central office and the respective public universities. The board is legally responsible and has broad authority to manage and control all operations of the institutions of higher learning. Within its broad authority and responsibility, the IHL Board of Trustees is responsible for establishing and monitoring policies for its staff in order to control the work-related activities of its staff.

As noted in the findings presented in this report, the IHL board has not adequately controlled IHL operations as they relate to the establishment and management of nonprofit corporations (the university foundations and the Commissioner's Fund) to which universities have delegated all of their fundraising authority. In addition to delegation of fundraising authority, the universities fund a significant portion of the operating costs of these nonprofit corporations. IHL and university officials maintain that such entities are not subject to state/public oversight nor the oversight of the IHL board. They maintain that the IHL board has no authority to manage and control the operations of the foundations.

The IHL board has full and complete authority to determine whether universities can permit such nonprofit corporations to be associated with universities and be delegated full fundraising authority using the universities' names, resources and staffs. The foundations exist solely to benefit the universities and are completely reliant on the universities' association for their existence. It would be reasonable for the IHL board to establish policies and guidelines for IHL/university officials and foundations if they desire to be officially associated with the respective universities.

With regard to university athletic programs, IHL sends mixed signals. On one hand, it *appears* the board has a significant interest in the operation of university athletic programs due to its annual "review" of athletic budgets. However, according to IHL staff, such budgets are not official and it is not feasible for the IHL board to spend too much time on athletics because the total budget amount is not very significant in relation to the entire IHL budget.

While PEER cannot determine the level of interest of the IHL board in university athletics, the public has historically shown a very significant interest in university athletics. In many cases, athletics is the most visible aspect of a university's operations due to the level of press coverage provided

(daily reports in newspapers and television newscasts). PEER found instances of university athletic officials attempting to conceal athletic department information from the public because *"they would not understand."* IHL administrators also acknowledged that, historically, university athletic department officials have resisted disclosure of certain departmental information (e.g., budgetary and personnel information).

With such significant public exposure and a historical tendency to avoid public disclosure, university athletic departments warrant additional oversight by the IHL Board of Trustees and staff. While the IHL board need not be involved in the day-to-day operations of university athletic departments, policy direction in the area of reporting and personnel are needed.

Contrary to the statements and beliefs expressed by many IHL and university officials, PEER does not seek to "hurt" fundraising at Mississippi's public universities. Instead, PEER recommends that the IHL board be more active in its management and control of athletic and foundation operations to insure that they are accountable and performing in an effective and efficient manner in the best interest of the respective universities. Such control and additional accountability should serve to enhance rather than damage universities' and their respective foundations' images as fiduciaries of donor contributions.

Recommendations

1. The Mississippi Legislature should amend MISS. CODE ANN. Section 25-61-3 to include the records of nonprofit organizations such as university foundations within the definition of public records (see Appendix D, page 83). The law should only apply to nonprofit corporations whose name or communications with contributors refer to a connection with a public university or other public body. Such nonprofit corporations should be permitted to exclude the names and addresses of contributors from public disclosure.

   Public university foundations in Mississippi share identities with their respective institutions, receive substantial funding from universities, are managed by university employees, are located on university campuses and, most importantly, have been delegated full fundraising authority by the respective universities. Such foundations may already be subject to Mississippi's open records laws, including donor names. PEER's recommendation, if implemented, would serve to protect donor identities if university officials so desired.

2. The IHL Board of Trustees should establish policies to govern relationships between public universities and nonprofit corporations (foundations) that universities have designated as their respective fundraising agents. Such policies should include requirements that:

- each university request authorization to designate a fundraising entity other than the university after presenting details of such proposed relationship, including university funding, staffing and fundraising goals;

- each university and related foundation annually report the following information, at a minimum, to the IHL Board of Trustees in a standard format (to insure that all report the same information):

    -- total foundation revenues and expenditures in detail, including fund balances;

    -- unrestricted revenues and expenditures in detail, including fund balances;

    -- amount of funds transferred to the university during the year;

    -- average annual return on foundation investments; and,

    -- amount of university-provided support (funding, staff, facilities, etc.);

- each foundation provide IHL central office staff complete access to foundation records and staff so that periodic performance reviews can be performed if necessary;

- university foundations fully comply with Internal Revenue Service laws and regulations for filing information returns (Form 990), for full disclosure to donors when contributions may not be fully deductible (due to the provision of preferred seating), and all other relevant laws and regulations;

- prohibit IHL board members, central office staff or university staff from receiving any gratuity from public university foundations (any official travel required of such persons should be funded from their respective travel budgets); and,

- prohibition of a public university from associating with a foundation that maintains business relationships with entities with which any foundation board member has a material financial interest.

3. The IHL Board of Trustees should establish policies to prohibit IHL central office staff and university staff from receiving additional compensation from foundations or other entities for duties already

performed under an employment contract with the IHL Board of Trustees. If a university foundation or other entity desires to provide funds for additional compensation and the IHL board concurs that the amount of compensation is appropriate, the board could allow an institution to receive such funds and authorize payment of the additional compensation as a part of its contract with the respective employees. Under such arrangements, the IHL board would retain full control of compensation provided to its employees for duties performed subject to contractual agreements between the board and its employees.

4. The PEER Committee intends to conduct a follow-up review and report to the 1994 Legislature as to whether the IHL Board of Trustees has implemented policies regarding relationships between universities and their foundations. If the IHL Board of Trustees has not taken such action, the PEER Committee will recommend that the 1994 Legislature amend MISS. CODE ANN. Section 37-101-15 to require the IHL board to maintain oversight over public universities' foundation relationships through the establishment of such policies.

5. The Commissioner of Higher Education should direct his staff to immediately disburse any funds available in the Commissioner's Fund to the Jackson State University Development Foundation, Inc., in an effort to repay the university foundation for funds inadvertently transferred to the Commissioner's Fund. Repayment of the funds should be top priority of the Commissioner's Fund, considering the financial condition (deficit fund balance) of the Jackson State University Development Foundation, Inc.

6. The IHL Board of Trustees should refrain from authorizing the payment of bonuses to university athletic staff members (or any IHL/university staff member) as a result of their respective athletic teams' participation in post-season contests, since Section 96 of the MISSISSIPPI CONSTITUTION prohibits the payment of bonuses.

7. The Mississippi Ethics Commission should review the activities of the athletic directors of Mississippi State University and the University of Mississippi with regard to their diversion of public funds into entities from which they receive compensation or other benefits.

   The Ethics Commission should also review the failure of the Mississippi State University president to disclose compensation from the Mississippi State University Development Foundation, Inc., on his annual Statement of Economic Interest filed with the Ethics Commission.

8. The Office of the Attorney General should further investigate the activities of the relationship between the athletic department of

Mississippi State University and Bulldog Communications, Ltd. (a company partly owned by the university's athletic director).

9. The IHL Board of Trustees should require university athletic departments to account for and report all athletic department revenues and expenditures. The board should develop a uniform reporting format to facilitate review and analysis of athletic department expenditures (e.g., by sport).

Appendix A

Institutions of Higher Learning
System Administration Office Expenditures
Fiscal Years 1988-1992

	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	TOTAL
GENERAL FUNDS						
Salaries/Wages/Fringes	$653,439	$1,186,331	$1,263,937	$1,498,153	$1,652,823	$6,254,683
Travel	63,226	68,408	59,747	72,366	85,781	349,528
Contractual Services	166,830	213,256	177,692	140,309	296,238	994,325
Commodities	20,924	26,942	20,000	25,446	40,448	133,760
Equipment	6,392	15,000	20,922	24,642	12,813	79,769
Total	$910,811	$1,509,937	$1,542,298	$1,760,916	$2,088,103	$7,812,065
FEDERAL FUNDS						
Salaries/Wages/Fringes	$0	$0	$0	$0		$0
Travel	0	357	0	1,483		1,840
Contractual Services	248,359	44,652	296,449	269,805	514,700	1,373,965
Commodities	0	0	0	0		0
Equipment	0	13,071	0	0		13,071
Total	$248,359	$58,080	$296,449	$271,288	$514,700	$1,388,876
OTHER FUNDS						
Salaries/Wages/Fringes	$0	$11,598	$0	$0		$11,598
Travel	0	0	16,000	25,891		41,891
Contractual Services	0	3,372	123,564	191,624		318,560
Commodities	0	0	9,438	7,597		17,035
Equipment	0	9,926	38,423	0		48,349
Total	$0	$24,896	$187,425	$225,112	$0	$437,433
TOTAL EXPENDITURES						
Salaries/Wages/Fringes	$653,439	$1,197,929	$1,263,937	$1,498,153	$1,652,823	$6,266,281
Travel	63,226	68,765	75,747	99,740	85,781	393,259
Contractual Services	415,189	261,280	597,705	601,738	810,938	2,686,850
Commodities	20,924	26,942	29,438	33,043	40,448	150,795
Equipment	6,392	37,997	59,345	24,642	12,813	141,189
Total	**$1,159,170**	**$1,592,913**	**$2,026,172**	**$2,257,316**	**$2,602,803**	**$9,638,374**

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SOURCE: IHL Budget Requests for FYs 1989-94.

Appendix B

IHL Board Office Salaries as of June 30, 1992

Name	*Position/Title*	*Salary*	*Funding Source*	*IHL Budget*
Alley, Frank D.	Project Administrator	$40,994	State Appropriations	System Administration
Alley, Warwick C.	Research Assistant	$16,800	Self-Generated	Guaranteed Student Loans
Amos, Ophelia S.	Collections Clerk	$15,450	Self-Generated	Collections
Anderson, Mary J.	Librarian	$23,624	State Appropriations	University Research Center
Avant, Eunice G.	Accounts Payable Clerk	$22,145	State Appropriations	System Administration
Bailey, Donna E.	Secretary	$17,337	State Appropriations	University Research Center
Bailey, Charles R., Jr	Administrative Liaison	$26,141	Self-Generated	Guaranteed Student Loans
Barner, Rickey M.	Public Safety Officer	$15,038	State Appropriations	University Research Center
Bates, Nancy R.	Lender Representative	$25,756	Self-Generated	Guaranteed Student Loans
Baxter, Milton B., Sr	Director, University Research	$56,650	State Appropriations	System Administration
Beach, Marilyn M.	Special Projects Officer	$40,725	State Appropriations	System Administration
Belokon, Walter J.	Resource Analyst	$30,509	State Appropriations	University Research Center

SOURCE: IHL personnel records

(Appendix B - Continued)

Name	*Position/Title*	*Salary*	*Funding Source*	*IHL Budget*
Blankenship, Thomas L.	Associate Director	$54,968	Self-Generated	Guaranteed Student Loans
Borst, Keith A.	Public Safety Officer	$6,449	State Appropriations	University Research Center
Bowen, Michael T.	Economist	$28,000	State Appropriations	University Research Center
Bowman, John P.	Assistant Comm., Construction & Physical Affairs	$54,171	State Appropriations	System Administration
Bradford, Agatha B.	Administrative Assistant	$22,660	State Appropriations	University Research Center
Brown, Patsy R.	Secretary	$19,055	State Appropriations	University Research Center
Bryant, James E.	Director, Computer Services	$44,290	State Appropriations	University Research Center
Bush, Jean Morgan	Director of Budget	$43,775	State Appropriations	System Administration
Campbell, Thomas H., III	Assistant Commissioner, Administration	$62,000	State Appropriations	*
Canzoneri, Dorothy M.	Secretary	$19,119	State Appropriations	System Administration
Carmicle, Orestes C.	Director of Audit	$35,000	State Appropriations	System Administration
Chisholm, Kathryn C.	Secretary	$18,540	State Appropriations	System Administration
Cleere, William R.	Commissioner of Higher Education	$99,500	State Appropriations	System Administration

* IHL did not specify budget from which salary was paid.

(Appendix B - Continued)

Name	*Position/Title*	*Salary*	*Funding Source*	*IHL Budget*
Coleman, Kay S.	Counselor	$30,095	State Appropriations	Student Financial Aid
Cook, Ann H.	Associate Commissioner of Higher Education	$72,100	State Appropriations	System Administration
Crenshaw, Betty	Research Assistant	$22,660	State Appropriations	System Administration
Daley, Edward R.	Director, MARIS	$47,822	State Appropriations	University Research Center
Dambrino, Joan	Assistant Director, School Services	$28,840	Self-Generated	Guaranteed Student Loans
Davis, Paul E.	Director, MARIS Technical Center	$38,867	State Appropriations	University Research Center
Draughn, James B.	Personnel Director, Employee Benefits	$37,369	State Appropriations	University Research Center
Eckels, Susan M.	Secretary/Receptionist	$15,450	Self-Generated	Guaranteed Student Loans
Edney, Andrea L.	Administrative Assistant	$21,630	State Appropriations	System Administration
Edwards, Monica Y.	Administrative Assistant	$18,000	State Appropriations	System Administration
Enos-Williams, Sally	Loan Counselor	$20,600	State Appropriations	Student Financial Aid
Flippin, James L.	Assistant Commissioner SFA & Director MGSLA	$66,950	Self-Generated	*
Fortenberry, Jerry D.	Facilities Maintenance Repairer	$18,376	State Appropriations	University Research Center
Gibbes, C.D., III	Special Projects Coordinator	$30,900	State Appropriations	System Administration

(Appendix B - Continued)

Name	*Position/Title*	*Salary*	*Funding Source*	*IHL Budget*
Graves, William T.	Chief Accountant	$30,000	State Appropriations	University Research Center
Guillotte, Christine C.	Purchasing & Property Control Officer	$24,205	State Appropriations	University Research Center
Hajj, E. Ann	Office Administrator/Counselor	$17,798	State Appropriations	Student Financial Aid
Harris, Deborah G.	Administrative Assistant	$24,205	State Appropriations	System Administration
Hawkins, Betty K.	Director, Information Services	$34,505	State Appropriations	System Administration
Hightower, Janice B.	Collections Manager	$23,145	Self-Generated	Guaranteed Student Loans
Hill, Edwin O.	High Speed Duplicator/Copier Operator	$20,000	State Appropriations	University Research Center
Hill, Marianne T.	Senior Economist	$46,350	State Appropriations	University Research Center
Ingram, Janet S.	Assistant to the Commissioner	$27,810	State Appropriations	System Administration
Jelks, L. J. Jr.	Cleaning Supervisor	$12,500	State Appropriations	University Research Center
Johnson, Holly B.	Accountant	$20,600	Self-Generated	Guaranteed Student Loans
Johnson, Lenora D.	Payroll Clerk	$21,115	State Appropriations	University Research Center
Johnson, Shirley J.	System Administrator	$19,935	State Appropriations	University Research Center
Jones, Darrell C.	Auditor	$23,000	State Appropriations	System Administration

(Appendix B - Continued)

Name	*Position/Title*	*Salary*	*Funding Source*	*IHL Budget*
Kennedy, Brenda F.	Collection Service Director	$29,870	Self-Generated	Collections
Kennedy, Virginia A.	Collections Clerk	$15,450	Self-Generated	Collections
Knight, Howard J.	Resource Analyst	$27,295	State Appropriations	University Research Center
Latham, Stanley L.	General Service Employee	$11,025	State Appropriations	University Research Center
Lea, Myrna W.	Administrative Assistant	$18,540	Self-Generated	Guaranteed Student Loans
Leach, Brenda P.	Administrative Assistant	$19,776	State Appropriations	System Administration
Lee, Collen M.	Reseach Analyst	$24,383	State Appropriations	System Administration
Lee, Daniel K.	Director, Economics	$48,970	State Appropriations	University Research Center
Lee, Martha A.	Librarian	$29,384	State Appropriations	University Research Center
Lester, Odies	Public Safety Officer	$15,113	State Appropriations	University Research Center
Lewis, Teresa R.	Administrative Assistant	$21,630	State Appropriations	System Administration
Louge, Barbara J.	Senior Demographer	$43,260	State Appropriations	University Research Center
Martin, Jesse M.	Financial Aid Advisor	$57,712	State Appropriations	System Administration
Martin, Lucy L.	Associate Commissioner, Finance & Planning	$72,100	State Appropriations	System Administration

(Appendix B - Continued)

Name	*Position/Title*	*Salary*	*Funding Source*	*IHL Budget*
Martin, Robert T.	Facilities Maintenance Repairer	$21,759	State Appropriations	University Research Center
McCluskey, Stephen J.	Director of Facilities and Public Safety	$33,990	State Appropriations	University Research Center
McDill, Jimmie L.	Building Supervisor	$22,000	State Appropriations	University Research Center
McKnight, Rodney	Auditor	$21,000	State Appropriations	System Administration
McKoy, Wade H.	Senior Planner	$47,107	State Appropriations	*
McManus, Molly N.	Secretary	$21,000	State Appropriations	*
Mead, Carol L.	Research Assistant	$23,525	State Appropriations	University Research Center
Measels, Sandra L.	Editor	$26,003	State Appropriations	*
Miller, Gloria J.	Secretary	$16,480	State Appropriations	System Administration
Nordan, Rita W.	Director, Teacher Education & Special Programs	$47,647	State Appropriations	System Administration
Norris, Tracey	Collections Clerk	$15,450	Self-Generated	Collections
Partee, Lee D.	Public Safety Officer	$15,038	State Appropriations	University Research Center
Pennington, Willie P.	Administrative Assistant	$21,630	State Appropriations	System Administration
Peoples, Robert C.	Facilities Maintenance Repairer	$21,600	State Appropriations	University Research Center

(Appendix B - Continued)

Name	*Position/Title*	*Salary*	*Funding Source*	*IHL Budget*
Pepper, Phillip	Assistant Commissioner, Research & Planning	$54,167	State Appropriations	System Administration
Phillips, William D.	Assistant Chief, Public Safety	$19,055	State Appropriations	University Research Center
Pickett, Charles A.	Associate Commissioner Academic Affairs	$72,100	State Appropriations	System Administration
Rees, Patsy B.	Receivables Clerk	$20,858	State Appropriations	University Research Center
Rhodes, James M.	Director of Business Services/Fiscal Officer	$51,500	State Appropriations	University Research Center
Richardson, James A.	Facilities Maintenance Repairer	$18,020	State Appropriations	University Research Center
Sharpe, Suzanne S.	Assistant Commissioner, SFA and Director MGSLA	$55,000	Self-Generated	Guaranteed Student Loans
Silver, Susan B.	Director of Institutional Analysis	$41,465	State Appropriations	System Administration
Simpson, Mary E.	Librarian	$20,085	State Appropriations	*
Simpson, John Jr.	General Service Employee	$12,113	State Appropriations	University Research Center
Smith, Laneal R.	Resource Analyst	$25,750	State Appropriations	University Research Center
Smith, Lorna H.	Systems Analyst	$30,000	State Appropriations	University Research Center
Smith, William R.	Economic Analyst	$29,870	State Appropriations	University Research Center
Smith, Robert H., Jr.	Resource Analyst	$29,232	State Appropriations	University Research Center

(Appendix B - Continued)

Name	*Position/Title*	*Salary*	*Funding Source*	*IHL Budget*
Sones, Donald E.	Claims Specialist	$20,332	Self-Generated	Guaranteed Student Loans
Sparks, Larry D.	Assistant Commissioner, Audit and Budget	$44,000	State Appropriations	System Administration
Springer, Susan B.	School Representative	$22,660	Self-Generated	Guaranteed Student Loans
Stone, Virginia A.	Research Statistician	$23,700	State Appropriations	University Research Center
Strain, Dorothy C.	Director, Student Financial Aid	$31,875	State Appropriations	Student Financial Aid
Swafford, Bobby D.	Printing Contract Specialist	$39,150	State Appropriations	University Research Center
Thagard, Aubrey D.	Research Assistant	$20,000	State Appropriations	University Research Center
Thompson, Whitney	Projects Assistant	$20,000	Grants	System Administration
Thornton, Sylvia I.	Personnel Officer	$26,747	State Appropriations	University Research Center
Trammel, Ray H., Jr.	Grounds Supervisor	$22,418	State Appropriations	University Research Center
Trevillion, Mia C.	Research Analyst	$18,000	State Appropriations	*
Triplett, Robert L., Jr.	Public Safety Officer	$15,038	State Appropriations	University Research Center
Trotter, Myra B.	Senior Budget Analyst	$30,900	State Appropriations	System Administration
Walker, Steven M.	Systems Analyst	$31,360	State Appropriations	University Research Center

(Appendix B - Continued)

Name	*Position/Title*	*Salary*	*Funding Source*	*IHL Budget*
Warren, Blenda J.	Administrative Assistant	$18,200	State Appropriations	University Research Center
Weachter, Belle	Collections Clerk	$15,450	Self-Generated	Collections
White, Jeanie	Assistant Director, Lender Services	$37,080	Self-Generated	Guaranteed Student Loans
Williams, Linda	General Service Employee	$11,000	State Appropriations	University Research Center
Woods, Christopher	General Service Employee	$11,000	State Appropriations	University Research Center

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Appendix C

Corporate Resolution of the Mississippi Resource Development Corporation

By virtue of the provisions of Article XII of the Corporate by-laws and the unanimous act of the Board of Directors, the following resolution is adopted on the day and date as hereinafter set forth.

Whereas the presidents of the eight universities, at the recommendation of the Board of Trustees, have pledged to support a fund known as the Commissioner's Fund with private, non-state monies; and

Whereas the fund so created is to be provided at the disposal of the Commissioner of Higher Education to permit him to conduct promotional and good will activities that cannot be provided from state source funds; and

Whereas the areas of expenditure herein set forth are deemed appropriate and beneficial for the purpose of promoting the Institutions of Higher Learning and thereby, through them, is a program directed toward the full development of the human and economic resources of the State of Mississippi;

NOW, THEREFORE, BE IT RESOLVED that the Mississippi Resource Development Corporation, acting by and through its President and its Secretary-Treasurer, receive the funds provided by the universities' presidents as aforesaid and expend them for the following purposes to promote the Institution of Higher Learning:

1. General Entertainment (legislators, business leaders, Board members, etc.)

2. Automobile lease, insurance and upkeep (or automobile allowance not to exceed the amount of lease).

3. Travel for Mrs. Cleere when she accompanies the Commissioner in representing the system.

4. Official travel for the Commissioner that is not covered under existing state policies.

5. Minor purchases in connection with the operations of the Board office not covered by state policy (for example, refreshments for special meetings hosted by the Commissioner).

6. Club memberships and dues (Colonial Country Club, River Hills Club, and University Club), and

BE IT FURTHER RESOLVED that the aforesaid expenditure be made solely upon the Commissioner's prior approval and that the documentation of such expenditures be submitted to and maintained by the Corporation as support for monthly reimbursement on payment of bills; and

BE IT FURTHER RESOLVED that in addition to the expenditure categories set forth above, other minor expenditures deemed appropriate and beneficial by the Commissioner and related to the activities of the University system may be paid from such funds.

This the 1st day of December, 1989.

Charles A. Pickett
Chairman & Director

Sidney Rushing
Director

Thomas H. Campbell, III
President & Director

Bryce Griffis
Director

James Rhodes
Secretary-Treasurer & Director

Proposed Legislation to Include Records of Certain Non-profit Corporations Within the Definition of Public Records

MISSISSIPPI LEGISLATURE REGULAR SESSION, 1993

BY: TO:

_____ BILL NO. _____

AN ACT TO AMEND SECTION 25-61-3, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN RECORDS OF NON-PROFIT CORPORATIONS AFFILIATED WITH THE STATE INSTITUTIONS OF HIGHER LEARNING AS "PUBLIC RECORDS"; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 25-61-3, Mississippi Code of 1972, is amended as follows:

§ 25-61-3. ~~Definitions.~~

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Public body" shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. Within the meaning of this chapter, the term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.

(b) "Public records" shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.

~~SOURCES: Laws, 1983, ch. 424, § 2, eff from and after July 1, 1983.~~

The term "Public records" shall include the records of any nonprofit corporation or similar organization:

(i) whose name or communication with contributors refers to a connection with one or more state institutions of higher learning or other public body; and

(ii) which receives or disburses to or for the benefit of such institutions or other public body, funds or assets solicited or contributed in the name or for the benefit of such institutions or other public body.

(iii) Notwithstanding subparagraphs (i) and (ii), such institutions or other public body may exclude the names and addresses of contributors from public disclosure.

SECTION 2. This act shall take effect and be in force from and after its passage.

SHORT TITLE:

Certain non-profit corporation records defined as public records

Preface

The members of the Board of Trustees are keenly aware of their constitutional duty to manage and control the state institutions of higher learning. The crucial factor in the governance of Mississippi's public universities is the independence and integrity of the governing board and the absence of factional politics.

The Board and the Institutions have corrected the multiple errors contained in the PEER Report and have responded to allegations, insinuations and innuendos. In many instances the report implies, but does not formally state, that the actions of the Board or the universities are in some way wrong, illegal or illicit. The deliberate use of half truths and distortions by the PEER staff is more suited to a tabloid. This approach is unprofessional and has created a report of allegations, many of which could have been eliminated with rudimentary, good faith efforts.

Nonetheless, a more formal and public approach to the relationship between universities and their foundations would put to rest the speculation and questions that have emerged from this report. The Board will formulate needed policy changes.

The Board will reply to the questions posed in the PEER Report by addressing concerns raised in the areas of (1) the Commissioner's Fund; (2) Foundations; and (3) Athletics. Following the Board's response is a more detailed reply of the foundations and universities involved.

Many of the issues put forward in the PEER Report can only be answered by foundations. At the request of the foundation boards, their respective responses should be considered in their entirety. They grant no permission to utilize or quote only part or portion of such responses without written approval of the respective entities.

The Board's response will take precedence if found in conflict with a university or foundation statement.

A PEER MANAGEMENT REVIEW OF

Institutions of Higher Learning

Commissioner's Office

March 12, 1993

142 086

The Commissioner's Office and The Commissioner's Fund

The review of the Commissioner's Office generated no comments that require a response. PEER recommendations center on the Commissioner's Fund.

The Commissioner's Fund has two purposes. It allows the Commissioner to make expenditures that support the IHL system and other discretionary expenditures in support of his office. In addition, the Commissioner is provided with a supplementary insurance policy and a car allowance. These funds are derived from unrestricted private monies donated with the knowledge of the Board by the various foundations that support the universities. This is a common arrangement for university Presidents and system heads. The Board has been made aware of expenditures on an annual basis.

The Board has determined that the Commissioner's Fund will be treated in the same manner as foundations. In that regard, the Commissioner will submit annually to the Board a proposed budget. The Commissioner will also provide to the Board an annual audit of expenditures, including additional benefits, and will continue to provide a copy of such report to the Institutional Executive Officers. All such reports submitted by the Commissioner to the Board will become a part of the Board's official documents.

Commissioner's Response

March 12, 1993

The Commissioner's Office

When Dr. Cleere assumed the position of Commissioner of Higher Education in December 1987, there were 207 employees located in the Education and Research facility reporting through various budgeted units to the Board of Trustees. The Commissioner, during the 1988 Legislative session, was given authority over all functions, which includes, but is not limited to: MARIS, Department of Economics, Library, Computer Services, Printing Department, Buildings and Grounds, Student Financial Aid, Guarantee Student Loan Agency, and System Administration. As a result of consolidation, transfer to other state agencies, retirements, attrition, and dismissal, the staff has been reduced from 207 employees to 106 employees, a reduction of 49%. Even with those reductions, the number of staff members responsible for "System oversight" has increased through reassignment, especially in accounting, auditing and planning. It should be noted that the staff is responsible for the oversight of just over $1 billion in FY 1993. Of that amount, less than one-third is appropriated from the state.

In summary and in contradiction to the implications contained in the PEER report, the Board Office has downsized its total staff considerably over this period of time while simultaneously introducing system-wide efficiencies and modernizing its operation.

The Commissioner's Fund

The Commissioner's Fund was established prior to December, 1987. The fund is derived from unrestricted private monies donated from the various foundations that support the universities. It was arranged with the knowledge of the Board to allow the Commissioner to make expenditures that benefit the IHL system and other discretionary expenditures in support of his office. In addition, it provides the Commissioner with additional benefits. This is a common arrangement for university presidents and system heads. Each of the eight university presidents, as well as other state officials, have similar packages.

The Commissioner's Fund is presently maintained by the Mississippi Resource Development Corporation, a private, non-profit corporation chartered by the State and granted a federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Two members of the Board of Trustees also serve as Board members of the Mississippi Resource Development Corporation. The Commissioner's Fund has been managed and audited with the knowledge of the Board of Trustees.

This $30,000 annual fund provides benefits for the Commissioner as well as funds to support various activities on behalf of the institutions and the Trustees. Examples of these activities include:

- *Central Office expenses related to Presidential Searches.*
- *Teacher Corps activities*
- *Sandwiches for a Legislative committee to work an extra hour through lunch on the higher education budget request.*
- *Program support for Black Legislative Caucus Workshop.*
- *Refreshments for Board meetings, staff functions, and meetings with university officials and guests.*
- *Working dinners with various officials including House and Senate committees.*

In addition to examples such as those above, the Commissioner receives a life insurance policy, two club memberships (one for a monthly Board luncheon) and an allowance for a private car. The insurance policy and car allowance represent a taxable salary supplement. The majority of state universities provide benefits equal to or in excess of those cited above for their institutional heads. The presidents are also provided with housing. These are common, privately supported benefits for higher education executive officers in the United States.

PEER Allegation: *The Commissioner's Fund provides additional compensation in excess of $17,000 per year to the Commissioner without the authorization of the IHL Board of Trustees.*

THE COMMISSIONER HAS NEVER RECEIVED A PRIVATE FUND SUPPLEMENT WITHOUT THE KNOWLEDGE OF MEMBERS OF THE BOARD OF TRUSTEES. In fact, the private fund supplement for the Commissioner was initiated with the knowledge of the Board of Trustees prior to the Commissioner being employed.

PEER Allegation: *The Commissioner's fund makes expenditures for which the benefit to the participating institution is questionable.*

ALL INSTITUTIONS RECEIVE AN ANNUAL REPORT FROM THE COMMISSIONER FULLY DISCLOSING BY CATEGORY THE NATURE OF EXPENDITURES MADE BY THE COMMISSIONER'S FUND DURING THE YEAR.

The PEER report fails to adequately describe why the cited expenditures were deemed questionable, even though the PEER investigator reviewed the supporting documentation. For example, the golf fee cited was the second annual minority alumni scholarship golf tournament for the University of Mississippi; while the contribution to charities was for a Multiple Sclerosis dinner and a Mississippi Easter Seal Society event.

The bulk of the expense for an annual IHL Board Christmas party was provided by seven university foundations and private donations from each IHL Board member that attended the event. The total cost to the Commissioner's Fund for the event was $408. Despite available documentation, the PEER report incorrectly states that the total cost to the Commissioner's Fund was $1,808.

It is wrong and misleading for PEER to selectively list expenditures for attendance at functions honoring the Governor and State Auditor as questionable while omitting any reference to Commissioner's Fund expenditures for activities involving the legislature. Expenditures of this nature were proper.

The Commissioner's Fund expenditures do not involve public monies and violate no State statutes or Board policy, and were discretionary expenditures for events deemed in support of the Trustees and universities.

PEER Allegation: *IHL officials knowingly expended $12,565 in funds that Jackson State University Development Foundation had inadvertently transferred to the Commissioner's fund.*

The Commissioner's fund was originally held by Jackson State University Development Corporation at the request of participating universities. As a result of the well publicized financial crisis at Jackson State University, the Commissioner, in

November of 1989, requested the monies in the Commissioner's fund be transferred to the Mississippi Resource Development Corporation.

Duplicate records had not been maintained on the Commissioner's Fund while it was housed at the JSU Development Foundation. However, after being informed of the transfer balance, Commissioner Cleere contacted JSU President Hefner and expressed concern over the accuracy of the transfer balance. President Hefner later informed the Commissioner that a recent audit did not substantiate an error in the Commissioner's Fund transfer balance.

When Dr. Smith was appointed Interim President of Jackson State University, Commissioner Cleere mentioned his prior concern about the accuracy of the Commissioner's Fund transfer balance. Dr. Cleere then formally requested that Dr. Smith review the matter. On November 7, 1991, Dr. Smith informed the Commissioner that a total of $12,565 had been inadvertently transferred to the Mississippi Resource Development Corporation. The Commissioner and Dr. Smith agreed that JSU would not make annual contributions to the Commissioner's Fund until the excess has been accounted for. Presently, $8,767 is still outstanding and will be repaid by August through the agreed upon procedure. (See attached correspondence.)

***PEER Allegation**: The Commissioner receives an annual auto allowance of $5,400 and also uses IHL motor pool vehicles for official travel or receives full mileage reimbursement from IHL.*

THE IMPLICATION THAT THE COMMISSIONER'S PERSONAL CAR, WHICH IS PURCHASED WITH PRIVATE NON-STATE FUNDS, CANNOT BE ELIGIBLE FOR MILEAGE REIMBURSEMENT IS INACCURATE. Mileage may be claimed for necessary and actual official travel in "non-state owned" private automobiles, whether they are personally owned, leased or furnished by a dealer. (See Miss. Code Ann. Section 25-3-41.)

The Commissioner customarily uses his private automobile for occasional out of town trips. The Commissioner only claims mileage reimbursement for his private car for necessary and actual official travel outside of Jackson. This practice does not violate Board policy or State law.

***PEER Allegation**: IHL officials have not administered the Commissioner's fund in accordance with Internal Revenue Service laws and regulations.*

The Mississippi Research Development Corporation has been informed of this allegation, has discussed the matter with IRS representatives, and, thus far has not confirmed that any violation has occurred. The corporation will take all steps to assure compliance with IRS requirements.

***PEER Allegation**: The Commissioner's fund audit for the three year period, July 1, 1988 through June 30, 1991, was not performed in accordance with generally accepted auditing standards.*

The Commissioner relied on the certified public accountant to prepare a proper audit report. The Commissioner has notified the certified public accountant of PEER's concerns. (See attached response.)

The PEER report also incorrectly states that the contract employing a certified public accountant to audit the Commissioner's fund was not signed until March 24, 1992, one week after the date of the auditor's report. On March 12, 1992, the Commissioner executed an original contract (engagement letter) authorizing the audit of the Commissioner's fund. The Commissioner, on March 24, 1992, executed a copy of the engagement letter to replace the temporarily misfiled original. Had the PEER investigator informed anyone of his concerns, this issue would have been resolved.

The Commissioner is in full agreement with the recommendation of the Board related to the oversight of this fund.

MISSISSIPPI

INSTITUTIONS OF HIGHER LEARNING

August 9, 1991

Office of Commissioner

Dr. Herman B. Smith, Jr.
Interim President
Jackson State University
1400 J. R. Lynch Street
Jackson, MS 39217

Dear Dr. Smith:

In November of 1989 the Commissioner's Fund account was moved from Jackson State University to this office. There was not an active foundation in this office at the time and JSU offered to handle the accounting. After a couple of years it became necessary to have more day-to-day control from my office, and it was transferred.

At the time of transfer some records were in disarray and we were unable to freely reconcile the amount of cash that was transferred from JSU. The JSU Foundation had been audited and we relied on their records. However, we are still uncertain on the accuracy of the transfer.

Would you please ask your staff, possibly Mr. Junior, to make a final audit and advise us of the accuracy of the final account.

If you have any questions, please let me know.

Sincerely,

W. Ray Cleere

rl

JACKSON STATE UNIVERSITY
JACKSON, MISSISSIPPI 39217

OFFICE OF
THE PRESIDENT

November 7, 1991

Dr. W. Ray Cleere, Commissioner
Board of Trustees of State
Institutions of Higher Learning
3825 Ridgewood Road
Jackson, MS 39211

Dear Dr. Cleere:

Pursuant to your request in August of 1991, an audit of the Commissioner's Fund, which was handled by the Jackson State University Development Foundation, has been completed. The audit was completed by Mr. E. J. Junior, Jr., to determine the accuracy of the transfer of funds on November 27, 1989.

In the re-examination of the Commissioner's Fund, it was determined that the balance in the Fund at November 27, 1989 was an amount of $17,720.00 instead of $30,285.00 as reported earlier. This means that there was an overpayment of $12,565.00 to the Mississippi Resource Development Corporation.

If we can be of further assistance, please let us know.

Yours truly,

Herman B. Smith, Jr.

Herman B. Smith, Jr.
Interim President

HBS:wmm

Enclosure: Statement of Changes in
Fund Balance 11/30/89
Commissioner's Fund

JACKSON STATE UNIVERSITY FOUNDATION
MISSISSIPPI INSTITUTIONS OF HIGHER LEARNING COMMISSONER'S FUND
STATEMENT OF REVENUES AND EXPENDITURES AND CHANGES IN FUND BALANCE
FOR PERIOD ENDED - NOVEMBER 30, 1989

COPY

REVENUES:	
Annual Allocations Received	$19,682
Banquet/Dinner Reimbursement	$ 467
Gifts	$ 1,000
TOTAL REVENUE	$21,149
EXPENDITURE	
All Purposes	$ 7,997
TOTAL EXPENDITURES	$ 7,997
EXCESS REVENUES OVER EXPENDITURES	$13,152
BEGINNING BALANCE JULY 1, 1989 (Adjusted to Cash)	$ 4,568
ENDING BALANCE NOVEMBER 30, 1989	$17,720
REFUND 11/27/91 TO MS DEVELOPMENT FOUNDATION	$30,285
OVERPAYMENT DUE J.S.U. FOUNDATION	$12,565

E. J. Junior, Jr.
Fiscal Advisor to the President
Jackson State University
10/30/91

MISSISSIPPI

INSTITUTIONS OF HIGHER LEARNING

February 12, 1992

Office of Commissioner

Dr. Herman B. Smith, Jr.
Interim President
Jackson State University
1400 J. R. Lynch Street
Jackson, MS 39217

Dear Dr. Smith:

The Commissioner's Fund account was moved from the Jackson State University Development Foundation to the Mississippi Research and Development Corporation on or about November 27, 1989. I requested the Jackson State University Development Foundation to transfer all funds in this account to the Mississippi Research Development Corporation. Subsequent audit work has concluded that an excess of $12,565 was transferred from the JSU Development Foundation. I presented this audit result to Dr. Hefner on a couple of occasions, but received no response. Thanks to your review and concurrence with our earlier findings, I propose the following payback schedule.

1. Any year-end funds for FY 92 remaining in the Commissioner's Fund, after all bills are paid, will be transferred directly to the JSU Development Foundation.

2. Jackson State Development Foundation may discontinue their voluntary annual contributions to the Commissioner's Fund until the excess has been accounted for, including the current year.

If this is acceptable, these repayment plans will continue until the excess is fully returned to your foundation.

Sincerely,

W. Ray Cleere
Commissioner

rl

JACKSON STATE UNIVERSITY
JACKSON, MISSISSIPPI 39217

OFFICE OF
THE PRESIDENT

(601) 968-2323
FAX NO. (601) 968-2948

March 3, 1992

Dr. W. Ray Cleere
Commissioner of Higher Education
Board of Trustees of State
Institutions of Higher Learning
3825 Ridgewood Road
Jackson, MS 39211-6453

Dear Dr. Cleere:

In response to your letter of February 12, 1992 regarding the Commissioner's Fund account and the removal of that account to the Mississippi Research Development Corporation on or about November 27, 1989, please be informed of my endorsement of your proposal for the payback schedule.

By copy of this letter and your original letter to me, I am advising Mr. Melvin Miller and Mr. Thomas Poitier of our agreement.

Thank you for your continued assistance to Jackson State University.

Yours truly,

Herman B. Smith, Jr.
Herman B. Smith, Jr.
Interim President

HBS.m

Copy: Mr. Melvin Miller
Mr. Thomas Poitier

MAR - 3

Steve Duncan
Certified Public Accountant

February 23, 1993

Mr. Larry Sparks
Institutions of Higher Learning
Jackson, MS

Dear Larry:

I am enclosing 9 ~~10~~ copies of my reissued opinion dated today and the reports thereon.

I apologize to you and the IHL for not having issued the report wording wise in accordance with SAS 58. I knew better, I just must have been focusing too much on the prior year reports. Please note that I have also booked the liability to Jackson State University.

I take strong objection to para 1 of their comments. I am enclosing a copy of the engagement letter that Dr. Cleere signed and it is dated March 12, 1992 and not March 24, 1992 as stated by PEER.

I also take strong objection to the inference by the PEER that the reason that SAS 58 and the Jackson State liability problems existed was because I was only paid $ 500 for the work. It is my responsibilty to perform the audit in accordance with generally accepted auditing standards regardless of whether I was paid $ 500 or $ 5 Zillion. Mr. Danny Miller makes accusations that are without merit and are unsubstantiated in appearance and in fact.

Please call me if I can help you in any way with this matter.

Sincerely,

Steve Duncan, CPA

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5430 Executive Place, Suite 2F, Jackson, MS 39206
Office (601) 981-3894 FAX (601) 981-3998

Steve Duncan
Certified Public Accountant

March 11, 1992

Dr. Ray Cleere
Commissioner
Mississippi Institutions of Higher Learning
Box 2336
Jackson, Ms. 39225

Dear Dr. Cleere:

In accordance with the provisions of this agreement, I am to perform an examination of the balance sheet of The Commissioner's Fund as of June 30, 1989, 1990 and 1991 and related statements.

My examination will be made in accordance with generally accepted auditing standards and, accordingly, will include such tests of the accounting records and such other auditing procedures as I deem necessary to enable me to express an opinion regarding the financial statements of The Commissioner's Fund.

It is understood that the cost of this three year audit engagement will be $ 500.00 and that the engagement will be completed by March 18, 1992.

I appreciate the opportunity to assist you in this matter. If the terms designated in this letter are satisfactory, please sign in the space provided below.

Sincerely yours,

Steve Duncan

Steve Duncan, CPA

Accepted by: _____

Title: Commissioner

Date: 3/12/92

156

100

5430 Executive Place, Suite 2F, Jackson, MS 39206
Office (601) 981-3894 FAX (601) 981-3998

A PEER MANAGEMENT REVIEW OF

Institutions of Higher Learning

University Foundations

March 12, 1993

Board of Trustees
Response
University Foundations

The various foundations that support each of the universities through fund raising activities provide indispensable financial support for a broad range of activities. These various activities include but are not limited to scholarships, faculty enhancement, salary supplements for key personnel, athletics and expenses incurred by fund raising activities. The foundations work closely with university officials in soliciting contributions and monitoring their disbursement.

The foundations accept endowments and gifts that are restricted in their use by donors. The PEER review did not identify any problems in the handling of these funds, which represent in excess of 90% of the foundations funds. The PEER review is focused only on the balance of Foundation funding (unrestricted) donated to be used at the discretion of the Foundation officials.

Although the Board has been aware of the use of unrestricted Foundation funds in the past, the Board will formally adopt policies regarding the relationships universities have with their foundations, including those specifically created to support athletic programs. This policy will address appropriate Board oversight of all activities carried out in the name of and on behalf of the universities.

The following are areas that will be addressed by Board policy:

1. *Public Disclosure of Foundation Annual Audited Financial Reports*

   Each university will require its Foundation to submit an annual audited financial report disclosing in appropriate detail all expenditures for the past fiscal year. The universities will provide this report to the Board of Trustees and will make it available to the public.

2. *Review of Foundation Budgets*

   Annually, prior to the beginning of the fiscal year each university will provide an approved Foundation budget to the Board containing estimated or anticipated unrestricted revenue and expenditures by both major object and programmatic area (i.e. fund raising, scholarships, entertainment, salary supplements, etc.). Included in a presentation of proposed expenditures will be any supplemental compensation to university officials, faculty, employees and athletic staff.

3. *Board Audits of Foundations*

   The universities shall provide access to the foundations for Board internal audit staff to routinely monitor compliance with Board policy, determine the value of university provided service and facilities, highlight major non-budgeted expenditures of unrestricted funds of the foundations and evaluate major changes in the structure, organization, and operation of the foundations.

4. *Annual Meetings Between The Board and Foundation Directors*

The universities shall encourage continuing communications between members of the Board of Trustees and directors of their various foundations. At a minimum, there should be annual meetings between Board members, the executive committee of the foundation's board of directors and Institutional Chief Executive Officers to determine their goals and aspirations towards the enhancement of both their university and higher education in the state.

A PEER MANAGEMENT REVIEW OF

Institutions of Higher Learning

Athletic Programs

March 12, 1993

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Board of Trustees
Response
Athletic Programs

During the early 1980's the Board began a process of more direct oversight of athletics by both the Board members and their staff. This process culminated in April 1989 with the development of Board policy that standardized tuition and athletic fees. (See attached Student Athletic Fee Policy.) With standardized athletic fees and limited subsidies from appropriated funds, the budget format for athletics was also standardized. Beginning with FY 1989-90 each university presented this standardized athletic budget for Board review and approval. This consistent approach to budgeting prevents the inappropriate use of state funds, provides a mechanism for eliminating deficits and provides for continuous monitoring. Many NCAA institutions have contacted Mississippi for details on this more accountable approach to intercollegiate athletic oversight.

Prior to the beginning of each fiscal year, the Board approves all operating budgets. Any revision to a department within a total operating budget during the year does not require Board approval, whether it is the department of English or the Department of Intercollegiate Athletics. Budget revisions are required only for an increase to the overall expenditures. Simply stated, a budget is a plan for expenditures and is based on estimates for the next twelve months. All expenditures are presented at year end in the audited financial statements, which are available to Board members and the general public. The

final financial statements may vary considerably from the original budget based upon factors such as revenue fluctuations and post-season play.

As a result of the Board's recent operational review and the concerns expressed by PEER, the universities will begin submitting major budget revisions for intercollegiate athletics during the fiscal year as an informational item. In the future, formal Board approval of revisions will be required if the revision reflects a change (increase or decrease) in the total athletic budget.

It is alleged that the Board's actions in providing supplemental compensation to coaches and athletic staff to prepare for and participate in post-season bowl games were in violation of the State Constitution. In this regard, the employment contracts for these individuals contemplated that they would have a normal work schedule commensurate with that of the university for regular season play. These employment contracts contained no provision for the extra work and effort required for post-season play. The additional compensation was for extra work not contracted for and, therefore, not subject to the Constitutional prohibition cited by PEER. The Board has determined that future athletic contracts will contain provisions that specifically address extra compensation for post-season athletic events. The university presidents will present annually to the Board procedures by which their athletic programs comply with NCAA regulations.

II. STUDENT ATHLETIC FEE

At the comprehensive universities the athletic fee will be $150. The university may match that with up to $400,000 in E & G funds.

The student athletic fee for the comprehensive universities will be phased in over a two-year period with the first year being a $100 student athletic fee and the E & G fund match $350,000. Full implementation of the $150 student athletic fee, $400,000 in E & G funds, will be in the academic year 1990-91.

At the remaining five schools those universities with a football program will charge a student athletic fee of $175. If there is not a football program the student athletic fee will be $100. The university may match that with up to $550,000 of E & G funds, or $300,000 if there is no football program. The student athletic fee for the four universities with football programs will be phased in over a two-year period with the first year being a $150 student athletic fee and the E & G match $525,000. Full implementation of the $175 student athletic fee and $550,000 in E & G funds will be in the academic year 1990-91.

These amounts are established as a maximum, and each school is to evaluate the athletic expenditures and match with E & G funds only to the extent necessary to be consistent with sound fiscal policy. For example, if an institution chooses a lower athletic fee, the E & G funds used for matching will be reduced proportionately.

A PEER MANAGEMENT REVIEW OF UNIVERSITY FOUNDATIONS

Institutional Response

Mississippi State University

March 12, 1993

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Mississippi State University

Office of the President

March 8, 1993

Dr. W. Ray Cleere
Commissioner of Higher Education
Institutions of Higher Learning
3825 Ridgewood Road
Jackson, MS 39211-6453

Dear Dr. Cleere:

I am transmitting to your office the complete response of Mississippi State University, the Mississippi State University Development Foundation, the Mississippi State University Department of Athletics, and the Bulldog Foundation, Incorporated.

I am also forwarding a statement on behalf of the university regarding the issues raised by the members of the PEER staff who came to campus.

We obviously are willing to provide additional information and insights if they are required.

I want the record to show clearly, however, that the Mississippi State University Development Foundation and Bulldog Foundation, Incorporated, have separate boards and operate in accordance with the rules, policies, and in compliance with state and federal tax laws. Their purpose is to serve the interest of the university. I am disappointed with the manner in which the PEER staff approached the request for information.

Sincerely yours,

Donald W. Zacharias
President

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P.O. Drawer J • Mississippi State, MS 39762-5509 • (601) 325-3221

STATEMENT ON BEHALF OF MISSISSIPPI STATE UNIVERSITY

Mississippi State University is proud of its relationship through the Office of Development with the Mississippi State University Development Foundation and the Bulldog Foundation, Inc. Both organizations are deeply committed to the support and improvement of all aspects of the university. They exist solely to make the university as competitive as possible and to assist the university in presenting itself as a quality institution in all actions it undertakes. The foundations' resources come from donors who believe in the university and the goals its has adopted in providing direct service to the people of Mississippi.

Unlike the IHL Board which oversees all public universities in the State of Mississippi, the Alumni Association Board of Directors, the Development Foundation Board of Directors, and the Bulldog Foundation Board of Directors are interested solely in the well-being of Mississippi State. They are also supportive of the Board of Trustees and express that support on frequent occasions when members of the Board of Trustees of the Institutions of Higher Learning and alumni and major supporters of the university have an opportunity to interact and review the performance of Mississippi State and hear about plans for its continued development.

When President Donald Zacharias accepted the presidency of Mississippi State University in 1985, the Board of Directors of the Development Foundation voted to provide him with a salary supplement to make the proposed state salary competitive with the salary he was receiving in Kentucky. Subsequent to that action the Board of Directors has increased

the salary on one occasion. Formal papers were drawn up by the foundation and adopted at that time. The president has made a commitment to work with the Mississippi State University community and with officials in the state to continue the evolution of the university through an exceedingly difficult period in the state and national economy and in funding for higher education.

President Zacharias has filed an Ethics Report annually since he came to Mississippi State in 1985. The report is a detailed one and shows his full commitment to comply with the information requested. When he learned that the supplement from the foundation, a part of his original employment, needed to be reported, he immediately filed an amended report. The fact that the president received a supplement was often mentioned in news stories. Only the amount had previously not been published.

When the auditors first arrived at Mississippi State to examine the books in the Athletic Department and at the Development Foundation, the university inquired about the reasons for the audit since the foundations routinely conduct their own audits and the Athletic Development is also audited by the state auditor, the board of trustees office, and files an annual report with the NCAA. The president, the university attorney, and the university auditor were told that some legislators had asked questions about the foundations. The university will always be cooperative with a member or members of the legislature. The university did find it highly unusual, however, that no legislator has ever made a direct inquiry to the university about any aspect of the foundations or departments involved. If they had,

they would have been given full and complete information to answer their specific questions. The precise purpose of the audit was never given and to this day has not been revealed. Regrettably , the tone of the audit on campus and the final draft of the report are characterized by a tone that is both antagonistic and threatening. The university hopes that language and statements which contribute to that tone can be modified or withdrawn before a final report is submitted to the PEER Committee. The reasons are simple: the development foundations are operated appropriately and fulfill a vital function for Mississippi State and make a significant contribution to its operation.

Prior to 1985 the Office of Development was raising approximately $2.8 million (1983) and $2.9 million (1984). In 1985 the Development Office raised $4.3 million. In the last four years the office has raised $11.3 million (1988-89), $11.2 million (1989-90), $11.1 million (1990-91), and $9.7 million (1991-92). The foundation has raised from 2 to 2-1/2 times as much money as was made available in 1985. Over that same period of time of seven years the Development Office has raised $59.7 million to serve the university and helped to create an endowment that now totals $51.4 million contrasted with the endowment of $19.7 million in 1986. It should be clear to everyone that the Development Foundation staff and the administrators at Mississippi State University have been highly successful in developing programs that alumni and friends of the university are eager to support. A similar success story can be written about private support regarding athletic facilities. The Scott Field football stadium expansion ($7.6 million), the Dudy Noble baseball stadium ($3.2 million), the Athletic

Dorm ($1.4 million), the Leo M. Seal M-Club building ($1.4 million), the Shira Field House and its addition ($2.1 million), the A. J. Pitts Tennis Center ($350,000), the Spencer Track ($700,000), the football practice fields ($1.2 million), and the indoor batting facility ($170,000) have all been built with private gift money or athletic self-generated funds.

The university believes that it is entirely appropriate to ask questions about the operations and relationships between foundations and the individual universities involved. The university will use continued care in making certain that all income and expenditures are carefully posted and used for the direct benefit of the performance of a complex university. It should be noted that Development Foundation records, except for those related to donors or potential donors, have been available for public review since January 1, 1993.

Mississippi State University is working with the Development Office in the final stages of a pre-campaign for major gifts to the university. A formal announcement of the plan will be made later this spring. In the meantime, university officials have visited alumni in several cities within the southeast and southwest sections of the country to determine the interest of alumni in those areas in making major gifts to the university. The response has been excellent and shows great confidence in the current operations of both the university and the foundations that assist it. This activity also confirms another significant point. Much of the money in the foundations comes from people who are not residents of the State of Mississippi. Gifts have come from as far away as Japan and as close as the

Patron of Excellence made by the president of the university, faculty members, and students.

The university recognizes the need for careful oversight of all fundraising activities on behalf of the university. The previous year of planning for a major gifts campaign has placed the Office of Development and the foundations in a better position to function. A careful statement of needs and guidelines has been developed for the campaign.

The president of Mississippi State has endorsed the explanations and policies presented by the Mississippi State University Development Foundation, the Athletic Department, and the Bulldog Foundation. The university believes it is appropriate for members of the Board of Trustees of the Institutions of Higher Learning to be informed annually of all salary supplements paid to individuals employed at Mississippi State. To be kept thoroughly informed, the Board of Trustees should continue to receive an annual report of each foundation and might wish to have each university, or at least those with foundations, report to the board once a year on their successes in finding additional funds for the university. The university believes that any effort to establish a policy requiring approval from the Board of Trustees or any other body prior to awarding a salary supplement will be seen as an effort to take control of private funds that are given to the university to supplement the state funding for a specific university.

It should be noted that several other universities in Mississippi are using state-appropriated funds to support their athletic programs and numerous other activities on their campuses by using appropriated dollars.

The PEER staff in the initial report makes a broad and pointed criticism regarding the money used by the development offices to raise the funds for Mississippi State and the University of Mississippi. No effort is made to explain how much state money is used in support of similar functions at the non-comprehensive universities. That absence is particularly glaring when the record shows that at least five other universities are using a significant amount of money, in accordance with board policy, to supplement their athletic programs and to build athletic and academic facilities with state-appropriated dollars. Mississippi State University carries out many of those same projects with private funds and relieves the state and other universities of an even greater burden of underfunding.

The outcome of the current review and the recommendations presented in the final PEER Report will play a significant role in determining whether the four universities with foundations can continue to assist the state in a meaningful and useful way or will be handicapped by unnecessary bureaucracy and political intervention. Mississippi State officials have talked with some legislators who seem to understand clearly the need for a partnership between the universities' foundations and their freedom from political interference. After this review it should be apparent to everyone that the foundations at Mississippi State University generate funds that are irreplaceable in the university's quest for excellence and for a performance that alumni and other donors wish to see it achieve.

Development Foundation

March 3, 1993

Dr. Donald W. Zacharias, President
Mississippi State University
P. O. Drawer J
Mississippi State, Mississippi 39762

Dear Dr. Zacharias:

The enclosed information is the response of the Mississippi State University Development Foundation, Inc., to the preliminary draft report of the Performance Evaluation and Expenditure Review Committee which was shared with the Executive Committee of the Foundation Board on Monday, February 22. The Executive Committee reconvened on March 1-2 to draft this response.

Please note that the Foundation Board has requested that any use of this response should be in its entirety and no permission is granted to utilize or quote only part or portions of it without approval of the Foundation.

Sincerely yours,

Albert C. Clark
President
MSU Development Foundation, Inc.

ac

Enclosure

P. O. Box 423, Mississippi State, MS 39762 (601) 325-3410
FAX No: 325-8426

Response of the

Mississippi State University Development Foundation, Inc.

to the Report of the

Performance Evaluation and Expenditure Review Committee

March 5, 1993

Introduction

The Performance Evaluation and Expenditure Review Committee of the Mississippi Legislature directed its staff in December 1991 to undertake a review of spending by the Institutions of Higher Learning central office, activities of all foundations established for the benefit of the institutions or the central office, and the athletic programs of the institutions. The IHL staff was notified of the planned review and apprised of its scope in June 1992. The draft report of the PEER Committee's staff was completed in February 1993, and deals with the three areas already cited.

Even though the Mississippi State University Development Foundation's records were scrutinized by PEER staff in the course of its review over several months, and even though staff members of Mississippi State University's Office of Development were interviewed extensively during the course of the review, no officer or director of the Foundation has ever been contacted directly by a representative of the PEER Committee. The Foundation has never been informed, directly or indirectly, of why the management review of its operations was initiated, or by whom. Nevertheless, when notified by IHL, via University officials, of the PEER Committee's intent, the board of directors of the Foundation voted to make all of its financial records

available to PEER staff members. Every item of information requested in the course of the PEER review was provided without hesitation; the business manager of the University's Office of Development was assigned to assist PEER staff in every way possible.

The Mississippi State University Development Foundation is rightly proud of its record of service to the University and the people of the state, and welcomes inquiries about its purposes or practices from any interested party. The Foundation acted last year, in fact, to make all of its records of revenues, expenditures, and transfers open to inspection by anyone. Although the Foundation has at all times been as open and as cooperative as possible with PEER's indirectly delivered requests, the highly critical generalizations about university foundations and the sometimes prosecutorial tone of the draft management and performance review could lead readers to conclude erroneously that misconduct or mismanagement has occurred. The Foundation deeply regrets that generalized allegations, implications of impropriety, and unsubstantiated speculation about the motives of individuals and organizations apparently will be presented in a manner that could give rise to badly distorted perceptions of the Foundation and the work it does.

In addition to responding to PEER's findings and recommendations, this document attempts to review concisely the Foundation's history and purpose, its contributions to Mississippi State University, and its recent activities and successes in private fund raising. The section of this response that deals specifically with the findings of the draft PEER report deals successively with:

The Relationship Between the Foundation and the University;
The Operation of the Foundation;
Possible Appearances of Conflicts of Interest;
Internal Revenue Service Requirements and Reporting; and
PEER's Recommendations.

The draft report of the PEER staff frequently deals with universities and university foundations in general, and often fails to make note of important distinctions among the separate organizations and how they choose to operate. Although the PEER draft report declares that university foundations ought to be under the control of the IHL Board of Trustees, it must be noted that the Mississippi State University Development Foundation is an independently incorporated, autonomous organization that has operated under its own charter and by-laws for the past thirty years, with the full knowledge and acquiescence of the IHL Board of Trustees. Obviously, the Mississippi State University Development Foundation has no wish to comment on or speculate about the activities of other, unrelated foundations. **This response, therefore, is specific to the Mississippi State University Development Foundation and, where appropriate, Mississippi State University. The Foundation has the absolute right as an independent organization to present its separate and unaltered response to the PEER staff's findings. Any use of this response should be in its entirety and no permission is granted to utilize or quote only part or portions of it without approval of the Foundation. The Foundation believes that an accurate picture can be obtained only by viewing this response as a whole.**

(Note: The Foundation's response to the draft PEER report deals with what appear to be the major issues and concerns raised. A substantial number of tangential allegations or ...ions sprinkled through the draft PEER report are inaccurate or misleading, at least ... as they might be construed to apply to the Mississippi State University Foundation. This response will not obscure the broader issues by attempting to treat each such item, but it must be understood that the absence of an objection to such flaws in the draft report does not imply agreement with the report's conclusions or speculations on such points.)

History and Purpose of the Foundation

For three decades, the Mississippi State University Development Foundation has served as a nonprofit corporation offering a comprehensive program of giving opportunities for alumni and friends of the university. The Foundation's purpose is four-fold:

- to provide the University a way to recruit and draw on the expertise of a network of dedicated volunteers who can assist in soliciting gifts from alumni and friends;
- to provide a mechanism to keep private gifts clearly separate from public funds and to provide flexibility in the use of private funds;
- to assist the University in the investment of endowed funds (the Foundation has greater flexibility than the public University to seek the most favorable return on investments); and
- to ensure that funds designated for a particular purpose are used in the manner intended by the donors, and to ensure that funds unrestricted by the donors as to their use are appropriately distributed.

Gifts may be either unrestricted or restricted for a particular purpose by the donor. Unrestricted gifts, which comprise approximately 10 percent of the total donated over the past five years, are distributed for programs, projects, special needs, and a variety of academic enrichment activities for which other support is not available. Restricted gifts always are used in accordance with the donor's intent, and the Foundation board of directors has no discretionary authority over their use.

Benefits of Private Fund Raising

For well over a century, Mississippi State University has been providing quality teaching, state-of-the-art research, and public service to the people of the state of Mississippi and the nation. The University has emerged as one of the region's and nation's premier research and service universities, but it has never wavered from its primary mission. Excellence in undergraduate education remains foremost among the University's priorities.

The core of the University's strength today, as always, is in the people who recognize and value excellence. Since the Foundation's inception in 1962, alumni, friends, private companies, and charitable foundations have invested more than $79 million in Mississippi State University through the Foundation. More than $45 million has been raised since moving to a constituency fund-raising effort four years ago.

As state support accounts for a continually decreasing proportion of higher education operating budgets, the University becomes more dependent on its own resources, its own initiative, and philanthropic and contractual relationships. Private contributions play an important role in funding programs at Mississippi State that otherwise would not be possible. These gifts that allow the University to continue to move ahead are used to establish scholarships, to provide professional development opportunities for faculty, to purchase equipment for research, and to construct new facilities, among other things.

Private contributions support many vital programs and activities. For example:

- Endowed chairs, professorships, lectureships, and state-of-the-art equipment ensure that the University continues to attract faculty who will provide the highest level of instructional excellence for Mississippi State's students.
- Scholarships and fellowships allow the University to attract high-ability students who will ensure that Mississippi State's tradition of educational excellence and service to Mississippi will continue, and that deserving and capable students will not be deprived of the opportunity to realize their potential.
- New equipment and technologies ensure that the University's students reach their full potential in a rapidly changing world, providing them with the skills to compete in a highly technical society.
- New books, journals, and information data bases ensure that the library at Mississippi State is ready to serve a new generation of students and faculty.

- Private funds for construction or renovation of buildings and facilities help provide the setting that improves the opportunities for tomorrow's leaders to learn and grow. Among the buildings or facilities entirely or partially constructed or renovated with private gifts are:

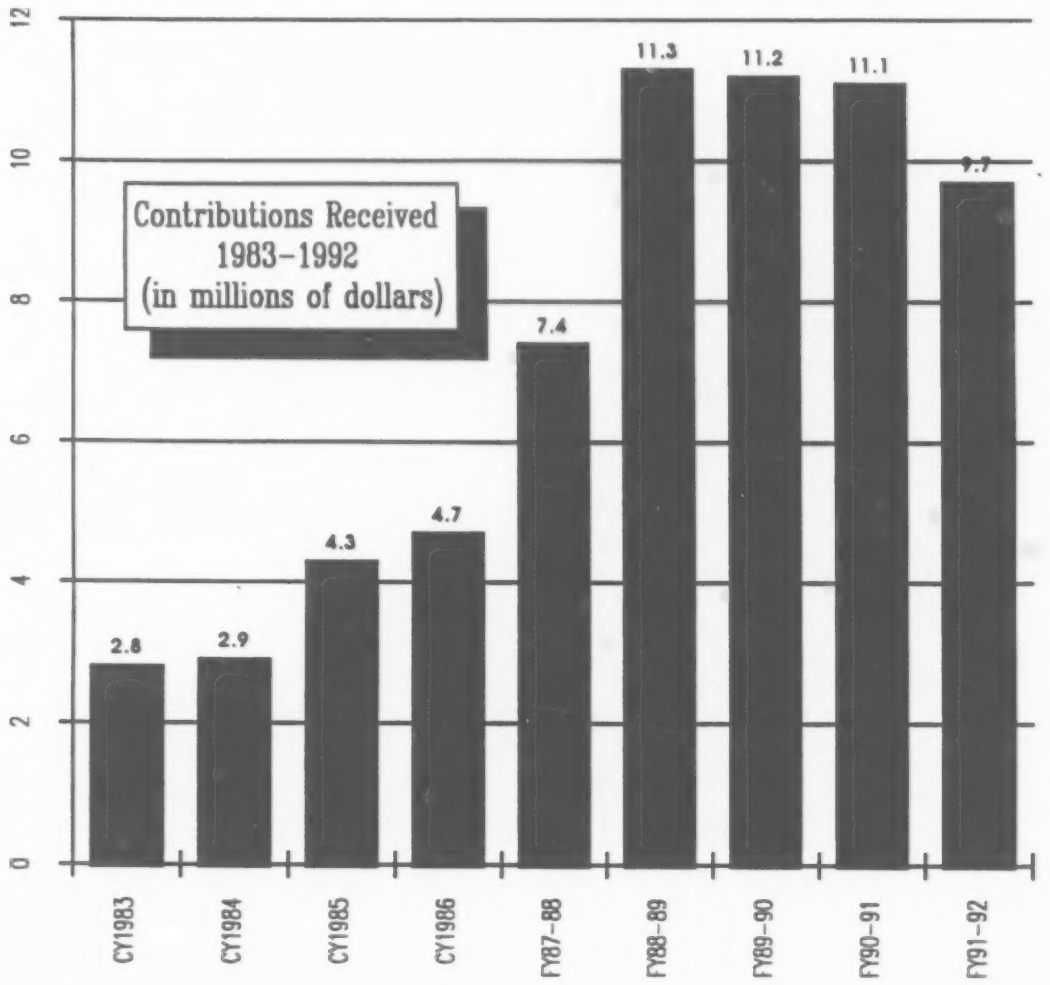
Chapel of Memories, 1966
McArthur Hall, 1970
Allen Hall, 1972
McCool Hall, 1975
Bulldog Club Building, 1984
Scott Field Expansion, 1986
Butler-Williams Alumni Center, 1987
Dudy Noble Field Expansion, 1987
Butler Guest House, 1988
University Honors Program Building, 1989
Whittington Suite Renovation (Union), 1990
Leo Seal M-Club Center, 1991
McComas Hall, 1991
School of Forest Resources Building, 1992
Meridian Campus Building, 1993
Professional Golf Management Facility, 1993

- In the past, when state funding provided for most of the institution's needs, Mississippi State University did not rely on endowed funds to complete its important work. But the continuation of many programs and services depends on the flexible resources provided by a strong endowment. These funds will ensure the long-term growth of the University and support programs crucial to the University's role in the next century, while providing the flexibility to focus resources on the greatest needs.

Recent Fund-Raising History

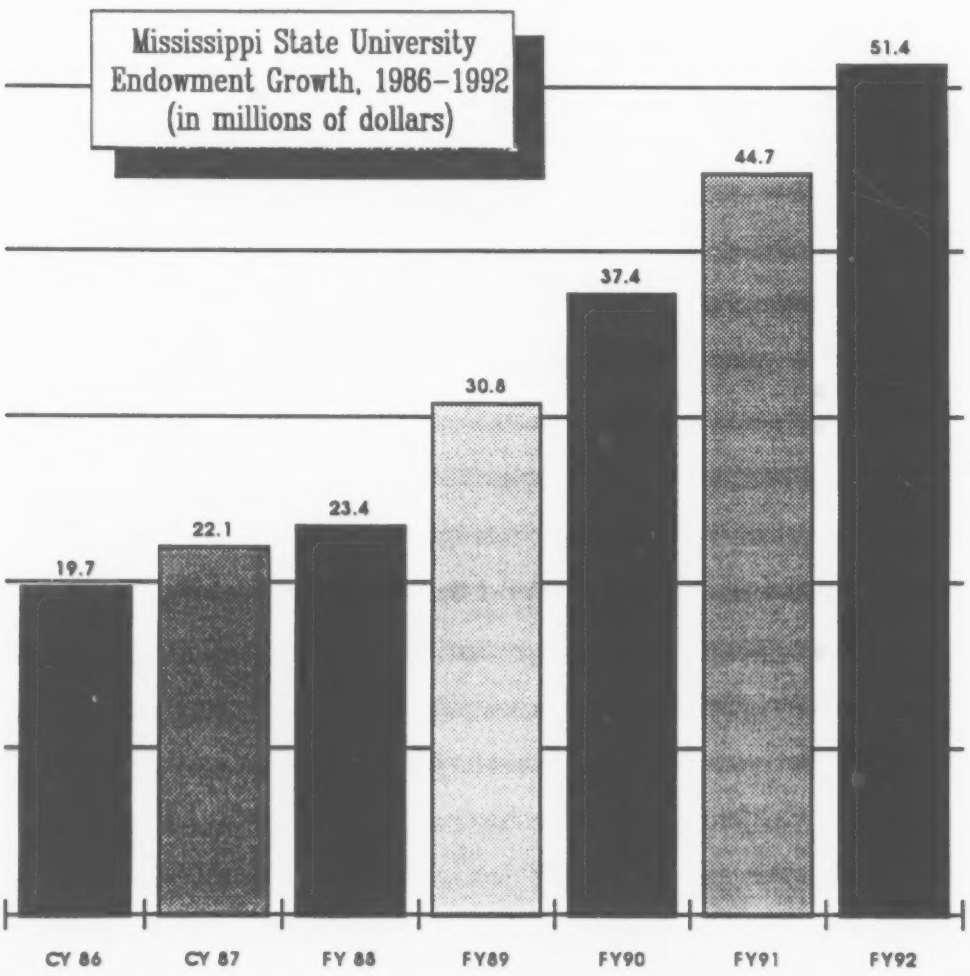
In recent years, more than 20,000 alumni, friends, parents, companies, organizations, foundations, and associations have made contributions. Their gifts are helping the University continue to meet the increased demands being placed on higher education in the state of Mississippi, as well as across the Southeast and the United States.

As mentioned before, more than $45 million has been contributed in the four years since the inception of constituency-based fund raising programs in the colleges and schools. Each academic unit has a fund-raising officer who solicits gifts for the college or school, with emphasis on gifts of $10,000 and above.



The preceding graph shows the dramatic growth in private fund raising from 1983 to 1992. The growth from 1988 to 1989 was largely due to several very significant gifts. The period from 1989 through 1992 held steady, as did the very large gifts. The downturn of 1992 was created, in part, because some significant gifts were not repeated during last year's reporting period.

Also, the Mississippi State University endowment has increased steadily over the past seven years, from $19.7 million in 1985-86 to more than $51 million in 1991-92. (Endowed gifts are those that establish or are added to a permanent fund that is never spent. Only the earnings on the principal are used to support programs and projects. Many other gifts are spent for designated purposes in the year in which they are received, and therefore do not contribute to endowment growth. The endowment grows from year to year as a result of new gifts and as a result of reinvested earnings on endowed funds.)



Response to the PEER Report

(Note: The draft PEER report furnished to the Foundation and used in preparing this response is an obviously incomplete and incorrectly ordered copy, which makes it impossible to judge fairly the completeness or appropriateness of this response. The partial report begins with numbered page 19, followed by pages 22, 23, 27, 31, 33, unnumbered page, 30, unnumbered page, 37, unnumbered page, 39, unnumbered page, unnumbered page. The accompanying "Executive Summary" begins with numbered page *vii*, followed by pages *x*, unnumbered page, and pages *xi-xv* and *xvii-xx*.)

It is important to note that this response to the findings and recommendations of the PEER staff's draft report is specific to the Mississippi State University Development Foundation, Inc., and Mississippi State University. PEER's tendency to use collective observations in describing the practices of the several universities and foundations unfortunately portrays these institutions and organizations in a more negative light than if each entity had been examined separately. Many of the generalized observations in the PEER preliminary report are not, in fact, applicable to the Mississippi State University Development Foundation or Mississippi State University. For example, while the report is critical of service by university officials on foundation boards, that situation does not exist at Mississippi State, where no University employees are members of the Foundation board. Likewise, some practices and policies observed by Mississippi State and the Mississippi State University Development Foundation may be unique among universities and university-affiliated foundations within the state. For example, while the report is critical of foundations for failing to disclose sufficient information about their operations, the Mississippi State Foundation has opened all of its revenue and expenditure records to public inspection.

1. The Relationship between the Foundation and the University

The PEER report suggests that university foundations are in practice integral parts of the universities they serve and are in effect state agencies, leading the authors of the report to the conclusion that "the IHL board has obvious authority to exercise control over the relationships between universities and their respective foundations." The report cites MISS. CODE ANN. Section 37-101-15, which refers to IHL Board of Trustees control of university funds.

The Mississippi State University Development Foundation exists solely to advance the purposes of Mississippi State University and, as already noted, it has been quite effective in that role over the past thirty years. In recognition of the substantial benefits to the University provided by the Foundation, the University has contracted with the Foundation to provide it with space, equipment, and staff. The Foundation and the University are partners in a shared undertaking: providing the means, through the encouragement and coordination of private philanthropic support, to enhance the operation of the University in pursuit of its educational goals. The Foundation and the Office of Development have distinct and separate responsibilities.

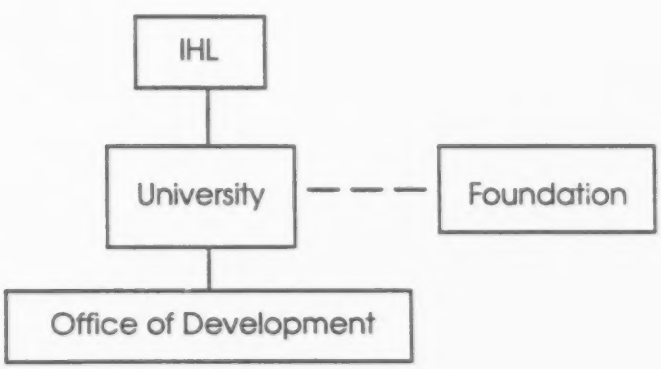
The Foundation's primary purpose is to exercise a fiduciary responsibility for the gifts received.

- The Foundation is responsible for overseeing the investment of endowed funds, bringing the broad perspective and business acumen of its members to the process, to the benefit of the University.
- The Foundation provides oversight and review of the distribution and use of the unrestricted funds that make up a small proportion of the total contributions to the University.
- The Foundation provides a volunteer network that helps to identify, cultivate, and solicit private contributions to the University.

The University's role in private fund raising is performed primarily by the University's Office of Development.

- The Office of Development functions as the fund-raising department of the University. Its role is to plan, organize, and conduct fund-raising programs that will attract private financial support to the University through the Foundation.
- The Office of Development is an integral part of the University's administrative structure, reporting to the University's Vice President for Institutional Advancement. It is part of the University's Institutional Advancement Team, which comprises fund raising, alumni relations, and university relations.
- The Office of Development is responsible for receiving, receipting, and acknowledging all gifts received, and for maintaining financial records.
- C[illegible]rations of the Office of Development are financed by a combination of University Educational and General funds and administrative fees assessed to all accounts held by the Foundation.

The relationships of the Foundation and the Office of Development to the University are illustrated below.



PEER's position that the IHL Board of Trustees must manage and control the Mississippi State University Development Foundation is not consistent with MISS. CODE ANN. Section 37-101-15. This section of the law requires the IHL Board to ". . . exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter *in possession, levied and collected, received, or appropriated* for the use, benefit, support, and maintenance or capital outlay expenditures of the institutions of higher learning. . . ." (emphasis added). As previously stated, the Mississippi State University Development Foundation is a nonprofit corporation separate and distinct from Mississippi State University. The statutory mandate to the IHL Board of Trustees does not apply until assets are received or held by the University. Receipt by the Foundation is not the same as receipt by the University. PEER has confused "government service" with "service to the government." The Foundation provides a service *to* the University; it is not a service provided *by* the University.

The "agency" concept does not apply to the Foundation. The Foundation is not the agent of the University. As correctly stated in the PEER report, it is the trustee of assets held by it. The Foundation has a fiduciary relationship with donors, as well as with the University. This relationship, however, is *not* without control. The "prudent man" rule applied to fiduciaries, and trust law found in MISS. CODE ANN., Article 3, Sections 91-9-101 - 91-9-119 (known as the "Uniform Trustees Powers Law"), define trustee and fiduciary functions and grant them certain powers. The relationship of the Mississippi State University Development Foundation and Mississippi State University is fully consistent with these sections of the law.

2. Operation of the Foundation

The PEER report criticizes university foundations as self-perpetuating bodies that are said to be accountable to no one.

The Mississippi State University Foundation has an organizational structure consisting of a lay board of directors, as is typical of nonprofit entities. The Foundation has no other "members." No University employee is a member of the Foundation board of directors. (The director of the University's Office of Development is normally elected as the non-voting secretary to the board of directors.)

The board of directors of the Mississippi State University Development Foundation consists of the current officers (except the non-voting secretary) and past presidents of the corporation, the presidents of the Alumni Association and Bulldog Club, and thirty other members who are elected for staggered three-year terms, with ten vacancies occurring each year. A director cannot immediately succeed himself but must remain off the board for at least one year before becoming eligible for re-election. There currently are forty members of the board.

An element of continuity is important to the successful functioning of the board of directors, and that has been achieved by the continuance in service for multiple terms by some members. The board also recognizes the value of fresh ideas and new perspectives, and ensures that its membership is continually renewed. *Only fifteen of the current forty directors, for example, were serving in 1987.*

The process for selecting new members of the board of directors is similar to that employed by other philanthropic organizations throughout the country. Ten directors are elected annually from among nominees submitted by the University and by other directors. Within the University, nominations are sought each year from the academic deans of the separate colleges and schools. A measure of commitment to Mississippi State University, demonstrated by a level of financial support equal at least to Patron of Excellence status (signifying a pledge to give at least $10,000 within a period of ten years), is a criterion for eligibility to serve as a

director of the Foundation. Thus, all directors of the Foundation are donors to the University. The foundation's charter mandates that a majority of board members must be Mississippi State University alumni, ensuring that there is a vested interest in the well-being of the University.

Directors of the Foundation serve without compensation, and pay their own expenses associated with travel to and from meetings, which are held periodically on the University campus and occasionally at other locations within the state. Directors receive no special perquisites.

The Foundation board of directors provides oversight of the investment and distribution of funds received and held on behalf of the University. The board establishes an annual budget and reviews the operations of the Foundation to assure that expenditures are within the budget criteria.

The Foundation's board of directors appoints several standing committees. Policies that govern management and investment of funds held by the Foundation are established by an Executive Committee. An Investment Committee makes semiannual reports of investment activities to the board, and adheres to an investment policy that protects the principal of the gifts and produces maximum total return without assuming undue risk.

An audit of the Foundation is conducted each year by an independent accounting firm, and an annual *Fund-Raising Report* produced by the Office of Development is made available to major contributors, University administrators, faculty, and staff, and any other interested parties.

Duties of the board of directors include:

- Providing oversight and review of the University's fund-raising activities.
- Managing the investment of endowed funds held on behalf of the University. Investment management is the primary responsibility of the board's Investment Committee, which makes recommendations to the full board of directors. No member of the Investment Committee is affiliated with a financial institution that is a trustee for funds held by the Foundation, although there is no prohibition against directors also serving as officers of such institutions.

The Foundation's Investment Committee currently is giving consideration to the employment of an outside investment manager.

- Overseeing the distribution, in keeping with the expressed wishes of the donors, of restricted funds that are held on behalf of the University. (Responsibility for the actual distribution of restricted funds rests with fund managers, each of whom is a University employee. Foundation directors have no discretionary authority with regard to the distribution of restricted funds.)
- Authorizing distribution of unrestricted funds held on behalf of the University. In 1991-92, for example, the board of directors authorized the distribution of approximately $701,000 in unrestricted funds.

The PEER report suggests that control of university-affiliated foundations properly rests with a politically-appointed Board of Trustees that is responsible for making policy for eight separate and distinct institutions. The Foundation believes that governance should reside in a lay board of business and professional leaders who have in common a deep and permanent commitment to the welfare of a particular university. The Foundation asserts that no other group can equal its level of familiarity with the University or dedication to the goal of winning friends and support for Mississippi State University. Foundation board members typically bring to the assignment what is essentially a lifetime affiliation with their chosen university. Their work on behalf of the Foundation and the University is impelled by a deep attachment to the institution and concern for its welfare that is impervious to changes in state governments or university administrations. The Development Foundation board of directors therefore vigorously defends its independent status and rejects the suggestion that control by the IHL Board of Trustees would be appropriate.

3. Possible Appearances of Conflicts of Interest

The Board of Directors

The PEER preliminary report asserts that university foundations routinely conduct business with entities in which foundation members hold financial interests, and that foundation members therefore often have a conflict of interest.

The Foundation board of directors is of necessity composed of persons of influence and affluence from throughout Mississippi and from other states. Given the widespread interests and involvements of such individuals, situations may sometimes arise in which the appearance of a conflict of interest could exist.

According to the MISS. CODE ANN. "Uniform Trustees' Powers Law," Article 3, Section 91-9-107(3)(a) a trustee has the power "to collect, hold and retain trust assets received from a trustee until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested." Section 91-9-107(3)(f) states that a trustee has the power "to deposit trust funds in a bank, including a bank operated by the trustee." The PEER report clearly misrepresents the intent of MISS. CODE ANN. Section 25-4-101 and Section 25-4-103 (o)(ii) dealing with public servants to include the volunteer board members of a private foundation. The implication that these board members serve in order to achieve personal financial gain is unwarranted, at best.

Salary Supplements

The PEER preliminary report recommends that the IHL Board of Trustees establish policies to prohibit university and IHL staff from receiving additional compensation for duties performed under contract with the IHL board. (It is not clear whether the objection is to salary supplements per se, *or whether the issue is one of disclosure.)*

The directors of the Mississippi State University Development Foundation emphatically maintain that an absolute prohibition against compensation of university staff from private sources would seriously undermine the ability of the University to attract and retain top quality faculty members, administrators, and coaches, and would place the University at a severe competitive disadvantage with regard to comparable institutions.

One of the major needs that can be met through private support of universities is the establishment of academic chairs, professorships, and lectureships which generally take the form of salary supplements and/or expense allowances for outstanding faculty members. (Such additional compensation or reimbursement typically is linked to a specified position, and automatically accrues to the holder of that position, rather than to a specified individual. Mississippi State currently funds several professorial positions in part through such arrangements, using restricted funds donated to the University for that express purpose.) The Foundation directors are aware of no state university system that imposes restraints on its member institutions such as would result from a ban on supplements.

Similarly, the great majority of major public doctoral and research institutions in the United States customarily provide salary supplements and/or fringe benefits to their chief executive officers, and often other top administrators, to enable the institutions to compete with private institutions and industry for top administrative talent. The need is particularly apparent in Mississippi, where state-funded base salaries for presidents trail well behind those of comparable institutions in the region. Among public institutions in the Southeastern Conference, for example, base salaries for presidents (*excluding supplements from private funds*) include: $157,000 at Auburn University, $126,000 at the University of Arkansas, $190,530 at the University of Florida, $133,400 at the University of Georgia, $126,360 at Louisiana State University, $135,503 at the University of South Carolina, and $138,375 at the University of Tennessee. (Source: *The Chronicle of Higher Education Almanac, 1992*. Data for the University of Alabama and the University of Kentucky were not available.) State-funded salaries of the chief executives of Mississippi's largest institutions are $102,000 for 1992-93.

Supplemental payments to head athletic coaches are the norm, rather than the exception, in major universities throughout the United States. To prohibit such flexibility to Mississippi institutions would be to relegate the state's major universities to a virtually insurmountable competitive disadvantage.

The only salary supplement directly approved by the Foundation's board of directors is that provided to the president of the University. (The PEER report cites the omission of the supplement from the annual reports that have been filed each year with the Mississippi Ethics Commission. All other outside income received was contained in these reports. The supplement was not originally reported because it was considered to have been a part of the president's compensation package from the time of his original employment at Mississippi State, and was not viewed as "outside income." The supplement has been reported to the Ethics Commission on an amended report. The Foundation provided the salary supplement at the request of the IHL Board of Trustees in order to make it possible to employ the president, who earned considerably more as head of a regional university in Kentucky than could have been paid at the time in Mississippi from state funds.)

The Foundation believes that salary supplements to University employees from private sources are appropriate and necessary in specific instances to secure the academic, administrative, and athletic expertise that the citizens of the state desire and expect for their institutions. The Foundation will accept the responsibility to inform routinely the IHL Board of Trustees of salary supplements, while retaining the authority to determine the number and level of such supplements. It is absolutely essential that the Foundation be able to utilize its funds to attract and retain top quality faculty members, administrators, and coaches. An inability to do so would place the University at a severe competitive disadvantage with other universities in the region.

Expenses and Gratuities

The PEER preliminary report cites a finding that IHL board members and staff and university staff receive "gratuities" from university foundations, such as travel expenses associated with attendance at and participation in University-related activities.

The Foundation board of directors believes that IHL trustees have an obligation to represent the university system from time to time at events and activities of significance to the institutions, and that the expenses associated with such representation may be appropriately met by the sponsoring institution, using unrestricted private funds. Such occasions often provide the opportunity for IHL trustees to meet and interact with faculty, students, and successful alumni and friends of the institutions, many of whom are current or prospective donors or the representatives of businesses, industries, or agencies that sponsor university research or participate with the universities in other educational endeavors. To remove the opportunity for university system policy-makers to avail themselves of such a significant source of information and insights into the interactions of the universities with important constituencies would seriously impede their ability to perform their duties. Many of the same considerations apply to the professional staff of the IHL Board of Trustees.

The Foundation directors further maintain that certain gratuities for university faculty and staff provided with privately donated funds are appropriate and necessary to the operations of the University. Examples of such appropriate gratuities, which could not be provided using state funds, include the small mementos presented in appreciation to retiring university employees and the competitively awarded annual Faculty Awards for outstanding teaching, research, and service given by the Alumni Association. A prohibition of such activities would work to the ultimate detriment of the institution, making it virtually impossible for the University to conduct employee relations programs such as are generally recognized as appropriate in large public and private organizations.

The Foundation directors believe that it would be appropriate for IHL to establish policies for the guidance of trustees and universities regarding "gratuities" for IHL trustees and central office staff. Certain gratuities for University employees are appropriate and necessary to the operation of the institution.

4. Internal Revenue Service Returns

The PEER report charges that university foundations fail to comply with all IRS laws and regulations, and alleges that the Mississippi State University Development Foundation's informational return on Form 990 is inadequate in some respects.

The Mississippi State University Development Foundation, Inc., has made a conscientious and good faith effort to file all returns and supply all information required by the Internal Revenue Service, and will continue to do so. The Form 990 was prepared by the same CPA firm that performs an annual audit of the Foundation and which is fully aware of all activities of the Foundation. The Foundation believes the firm to be fully competent and filed the returns as prepared by the firm.

The PEER preliminary report contends that foundations fail to adequately communicate to donors that a portion of their contributions that result in preferred seating at athletic events may not be tax deductible.

The Mississippi State University Development Foundation voted in 1990 to remove any linkages between contributions to the Foundation and preferred seating at University athletic events.

5. PEER Recommendations

The PEER preliminary report recommends that state law be amended to make the records of nonprofit organizations such as university foundations (excluding records identifying donors) public records.

The directors of the Mississippi State University Development Foundation voted in October 1992 to open to public review any and all financial records of the Foundation, excluding those that identify donors or prospective donors. All financial records of the Foundation after December 1992 may be reviewed by anyone. The Foundation also publishes an annual *Fund-Raising Report* which includes a review of fund-raising activities, investment practices and results, and a summary of the disbursement of unrestricted funds.

The PEER report recommends that each university be required to request authorization from IHL to designate a fund-raising entity other than the university.

The Mississippi State University Development Foundation was incorporated in 1962 in accordance with the laws of the State of Mississippi. The Foundation has operated since that time with the full knowledge and acquiescence of the IHL Board of Trustees.

The PEER report recommends that each university and foundation report annually to the IHL Board of Trustees total foundation revenues and expenditures, including unrestricted revenues and expenditures, "in detail."

A summary of Foundation revenues and expenditures, including unrestricted revenues and expenditures, is included in the annual *Fund-Raising Report*, which is available on request to any interested party. The Foundation also is fully prepared, on request, to supply the IHL Board with the approximately 5,000 pages of detailed revenue and expenditure reports generated each year.

The PEER report recommends that each university and foundation report to IHL annually the amount of funds transferred to the university during the year.

The Foundation already provides an accounting of transfers to the University to the State Auditor each year, and the information is further available for public review. The Foundation will provide the information to the IHL Board of Trustees on request.

The PEER report recommends that universities and foundations provide to the IHL Board of Trustees information on annual returns on foundation investments and information on the amount of university-provided support for foundation activities, and that IHL staff have complete access to foundation records and staff.

The Foundation includes financial information in its annual *Fund-Raising Report*, which is provided to the IHL Board of Trustees and any interested party, and the financial information of the Foundation is further open to public review.

The PEER report recommends that foundations comply fully with Internal Revenue Service laws and regulations.

The Mississippi State University Development Foundation, Inc., has made a conscientious and good faith effort to file all returns and supply all information required by the Internal Revenue Service, and will continue to do so.

The PEER report recommends that IHL Board members, central office staff, or university staff be prohibited from receiving any gratuity from public university foundations.

The Mississippi State University Development Foundation disagrees with this recommendation for the reasons presented earlier in this response.

The PEER report recommends that public universities be prohibited from associating with a foundation that maintains business relationships with any entity in which a foundation member has a financial interest.

The Mississippi State University Development Foundation believes that such a prohibition would be detrimental to the University, for the reasons noted earlier.

The PEER report recommends that the IHL Board of Trustees establish policies to prohibit IHL staff and university staff from receiving additional compensation from foundations for work also performed under contract with IHL.

The Development Foundation believes that a prohibition on salary supplements for faculty and administrators would be virtually unique among the nation's major universities and would impose an insurmountable handicap on the ability of the University to recruit and retain top quality individuals. As already noted, the Foundation is fully prepared to provide required reports to the IHL Board of Trustees.

The report suggests that the PEER Committee will consider seeking legislation in 1994 that would require the IHL Board of Trustees to assume oversight of university foundations.

It is to the advantage of the public institutions of the state to be served by independent foundations free from outside control. An independent foundation is composed of volunteers committed to the support of a single institution and dedicated to assisting helping fulfill its unique role and mission. The IHL Board of Trustees also serves a necessary function by ensuring that the state system of higher education provides maximum benefits to the citizens of the state. But because of the need to maintain a certain impartiality and uniformity in its policies, the IHL Board of Trustees could not bring to the oversight of private fund raising the wholehearted and unequivocal commitment to the welfare of a university that characterizes a foundation devoted to a single institution.

A PEER MANAGEMENT REVIEW OF UNIVERSITY FOUNDATIONS

Institutional Response

University of Mississippi

March 12, 1993

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The University of Mississippi

Office of the Chancellor
University, MS 38677
(601) 232-7111

March 4, 1993

Dr. W. Ray Cleere
Commissioner of Higher Education
State Institutions of Higher Learning
3825 Ridgewood Road
Jackson, MS 39211

Dear Dr. Cleere:

Attached is The University of Mississippi's response to the PEER Committee Report. If additional information or clarification is needed, we shall be happy to provide it.

Sincerely,

R. Gerald Turner
Chancellor

Enclosure

THE UNIVERSITY OF MISSISSIPPI FOUNDATION, THE OLE MISS LOYALTY FOUNDATION, AND THE UNIVERSITY OF MISSISSIPPI ATHLETIC DEPARTMENT
RESPONSE TO THE PEER REPORT
March 1993

The following is a response to each of the allegations of the PEER Committee regarding the activities of The University of Mississippi Foundation, The University of Mississippi Loyalty Foundation, and The University of Mississippi Athletic Department. Some of the allegations relate to all such entities on the campuses of IHL institutions while others are specific to The University of Mississippi.

In order to put these answers in the proper context, a brief explanation of the origin and purposes of the Ole Miss Loyalty Foundation and The University of Mississippi Foundation should be helpful.

The Ole Miss Loyalty Foundation was chartered by the State of Mississippi in 1969 as a non-profit corporation for the support of the Department of Intercollegiate Athletics at The University of Mississippi. Its primary purpose is for scholarships for student-athletes, improvements in athletic facilities and equipment, and for support generally of Ole Miss athletics. The University of Mississippi Foundation was chartered by the State of Mississippi in 1973 as a non-profit corporation whose purpose is to operate exclusively for the benefit of The University of Mississippi and its students, alumni, faculty and staff, and to this end, to receive, solicit, accept and hold, administer, invest and disburse

any and every kind of property for such educational, scientific, literary, research and service facilities and activities as may be approved by The University of Mississippi. Both state chartered non-profit corporations are also granted federal tax exempt .atus under 501(c)(3) of the Internal Revenue Code.

The goals of The University of Mississippi Foundation are met solely from private donations, most of which are restricted gifts for a specified purpose, and a much smaller percentage of unrestricted gifts, which are disbursed only by authority of the Foundation Board of Directors. It is the disbursement of income from private unrestricted gifts that is one of the major areas of critique in the PEER report.

The Board of Directors of The University of Mississippi Foundation is composed of many of the major donors of the University who have a real incentive to oversee the proper expenditure of their own personal gifts and those of fellow alumni and friends.

Donors can choose to make their gifts to The University of Mississippi, which places their gift under the control of the State of Mississippi; or alternatively, gifts can be made to The University of Mississippi Foundation and be controlled by other donors constituting the Board of Directors of The University of Mississippi Foundation. Many donors prefer their funds to be

overseen by private citizens with financial expertise rather than to have their funds within a state controlled account. Thus, many choose to help the University through its foundations.

1. **PEER Allegation:** University officials receive additional compensation from university foundations without IHL Board authorization.

   University of Mississippi Foundation Response:

   IN NO INSTANCE HAS A UNIVERSITY CHIEF EXECUTIVE OFFICER RECEIVED A PRIVATE FOUNDATION SALARY SUPPLEMENT WITHOUT THE KNOWLEDGE OF MEMBERS OF THE BOARD OF TRUSTEES, INSTITUTIONS OF HIGHER LEARNING. In fact, gift supplements for several of the Presidents were implemented at the request of some members of the Board of Trustees.

   Following PEER's 1990 report, the Board has required that the campus chief executives report all private foundation supplements to faculty and staff members at the end of each fiscal year. Therefore, on file in the Board Office is a report of such salary supplements for each institution.

   In addition, The University of Mississippi Foundation has made public for the last three years all faculty, staff, and administrative supplements provided from private funds. For 1991-92, these are as follows:

	Number	Amount
Faculty	63	$ 648,234
Staff	6	22,209
Administrators	9	67,000
TOTAL		$ 737,443

The concern expressed by PEER on this issue can be met by the Board of Trustees taking official action to approve a state salary plus permission for The University of Mississippi Foundation to provide private support through salary supplements.

2. **PEER Allegation:** University foundations have not been accountable for their activities, particularly the expenditure of unrestricted funds.

University of Mississippi Foundation Response:

The University of Mississippi Foundation Board of Directors has in place specific guidelines for the expenditure of unrestricted private donor funds. Major programs such as scholarships, student recruiting, visiting writers program, Chancellor's office support, administrative and faculty supplements, and special programs like "Firing Line" are all specifically approved. Expenditures over $2,500 must be approved by the Executive Committee, and those over $10,000, by vote of the full Board of Directors. The Foundation Executive Director can authorize disbursements under $2,500.00

by checks signed by both the Secretary and Treasurer. Consistent with PEER recommendations, the Board of Directors approved a full budget in advance for unrestricted fund expenditures for FY 92-93.

PEER acknowledges that The University of Mississippi Foundation has published a complete financial report, including expenditures of unrestricted fund income and private gift salary supplements to faculty, staff, and administrators. This report has been publicly released every year since FY 89-90. It is incorrect to imply that the Board of Directors of The University of Mississippi Foundation has not been accountable. As stated earlier, members of the Board of Directors of the Foundation constitute some of the more substantial donors of gifts made to the Foundation and have a direct interest in fund accountability.

The PEER Report states that the Ole Miss Loyalty Foundation falsely represents that any donor to the Loyalty Foundation is a member of the Board of Directors by virtue of having made a contribution. This charge is simply incorrect. Some publications promoting the Loyalty Foundation state that a contributor or donor to the Loyalty Foundation is a **member** of the Foundation. The literature does not say that a donor is a **director** of the Foundation.

3. **PEER Allegation:** University officials use university foundation funds to provide travel, entertainment, and gifts for IHL Board Members and the Commissioner.

University of Mississippi Foundation Response:

With full knowledge and approval of The University of Mississippi Foundation Board of Directors, The University of Mississippi Foundation does assist members of the Board of Trustees, Institutions of Higher Learning, with their expenses to attend University of Mississippi functions. The Foundation has done this for many years.

Members of the Board of Trustees oversee the operations of eight universities. Most members are employed full time in various occupations and professions but, nevertheless, contribute hundreds of hours toward their responsibilities for only a state authorized per diem. Athletic events, building dedications, and major programs provide special opportunities for Trustees to visit campuses and to meet and confer with university personnel and students. These opportunities are valuable in order to advise Trustees about specific programs on campus and to give Trustees an opportunity to get to know those who administer and/or implement University programs under Trustee oversight.

Many Trustees are of m t means. It would be unfair, as well as financially difficult, for them to participate in

institutional functions without reimbursement of expenses. Such expenditures are reported to The University of Mississippi Foundation Board and are viewed by the Foundation as a very effective means of promoting The University of Mississippi, which as PEER notes, is the primary purpose of The University of Mississippi Foundation.

Since this practice involves no public tax monies, violates no Board Bylaw or State statute, and is in the best interest of the University, The University of Mississippi Foundation Board of Directors sees no reason to discontinue such practices.

4. **PEER Allegation:** University officials do not comply with all applicable Internal Revenue Service laws and regulations for nonprofit corporations in the administration of Mississippi's public university foundations.

A. **Peer Allegation:** Inadequate Disclosure of Information on Tax Returns.

University of Mississippi Foundation Response:

The University of Mississippi Foundation hired one of the best known and largest accounting firms in the world, Arthur Andersen & Company, to perform its annual Foundation audit and to prepare the annual tax return of the Foundation and of the various unitrusts administered by the Foundation. Arthur Andersen & Company probably

prepares more Form 990 tax returns than any other single accounting firm, and it is reasonable to assume that it properly prepares the Internal Revenue Service form.

The accounting firm was paid a total of $13,192.01 during FY 1991-92 for its services. The Board of Directors of The University of Mississippi Foundation expects the returns to be filed correctly. The Internal Revenue Service has accepted the returns as filed each year and has never audited the Foundation. However, the specific issues raised by PEER will be communicated to Arthur Andersen & Company.

B. **PEER Allegation: Failure to Disclose Limited Deductibility of Contributions.**

University of Mississippi Foundation Response:

The University of Mississippi Foundation believes it addressed this concern before receiving the PEER draft report.

The University of Mississippi Foundation asked Arthur Andersen & Company how it should reflect Section 170(1) disclosures on its annual reports to donors. With Arthur Andersen's advice, specific language was included in the annual report to the approximately 10,000 donors to The University of Mississippi Foundation. Please see the

attached copy of a representative report mailed to one of the donors (Attachment A).

The Drive for Athletics began in the Fall of 1987. Section 170(l) was added to the Internal Revenue Code thereafter. Therefore, it was impossible to include reference to this code section in the 1987 fundraising literature that PEER cites.

C. **PEER Allegation:** In two circumstances, individuals were allowed to improperly use the University of Mississippi Foundation to make gifts to University officials.

University of Mississippi Foundation Response:

The two examples cited by PEER are neither violations of IRS rules nor of Foundation procedure. For this allegation to have substance, the Foundation would have to have been used as a channel to allow private donors to make a gift to a University employee and incorrectly receive a tax deduction for that gift. As outlined below, the bases of these allegations regarding Athletic Director Warner Alford and Chancellor Gerald Turner are groundless.

(1) Annandale Golf Club Membership

Thirteen individual donors did contribute their private funds to The University of Mississippi Foundation for the restricted and stated purpose

of purchasing a membership in Annandale Golf Club for the use of The University of Mississippi Athletic Director. The club required that the membership be placed in someone's name. Since the gift was made to establish the membership for the Athletic Director, the name of the current Director, Warner Alford, was designated as the "primary user." To claim that the membership was given to Mr. Alford personally is erroneous. The membership is, in fact, one for the Athletic Director of The University of Mississippi, Ex Officio. When Mr. Alford is no longer Athletic Director at The University of Mississippi, the primary user will be the next Athletic Director.

This membership was given so that University officials could host potential donors in a relaxed setting. Therefore, this was and is a proper transaction for The University of Mississippi Foundation and its use of private restricted funds. PEER's objection is without merit. (See Attachment B for a letter from an officer of the Annandale Golf Club certifying the ex-officio status of this membership.)

The PEER staff cites Revenue Ruling 61-66 as authority for its position. This Internal Revenue Service ruling deals with a gift to a university to be disbursed to a teacher who was not a candidate for a degree and answers the question whether the transfer is excludable as a fellowship grant under Section 117 or as a gift under Section 102. The ruling concludes that, for the teacher, the gift is excludable from income taxes under Section 102. For the donors, the contribution is non-deductible.

For this ruling to have applicability, Warner Alford would have to have been given the membership in Annandale personally. It would have to have been his membership to keep for life even after he was no longer Athletic Director. The donors and an officer of the club assert this is not true. Mr. Fruge is aware of the rule of law expressed in Revenue Ruling 61-66 and, in fact, did not allow retirement gifts to our former Chancellor to flow through the Foundation for the very reason cited by PEER. Since Mr. Alford only received the use of the club membership in his official capacity as Athletic Director, Revenue Ruling 61-66 has no applicability (See Attachment C).

(2) Alleged Charitable Deduction

The 1989 transaction noted by PEER involved the contribution of $25,000 for the benefit of Chancellor Turner and two staff members from a donating private Section 501(c)(3) foundation to The University of Mississippi Foundation, which is also qualified under Section 501(c)(3). The erroneous premise of PEER is that The University of Mississippi Foundation was used to create an improper tax deduction to an individual when, in fact, the donation was from a tax exempt foundation which did not need, nor could it claim a tax deduction (See Attachment D).

Section 509(a) of the Internal Revenue Code defines the term "private foundation," and, in doing so, divides tax-exempt Section 501(c)(3) organizations into two basic classifications: private foundations and nonprivate foundations. Private foundations receive most of their contributions from one or a few donors. Nonprivate foundations receive their contributions from many donors. The University of Mississippi Foundation receives support from nearly 10,000 donors each year and is, therefore, a nonprivate foundation within this IRS Code. Private foundations are subject to taxes outlined in Chapter

42 of the Internal Revenue Code; nonprivate foundations are not subject to these same rules.

As a nonprivate foundation under the Internal Revenue Service guidelines, The University of Mississippi Foundation is not subject to Revenue Ruling 81-217 cited by PEER. This ruling involved the applicability of Section 4945 under Chapter 42 of the Code, and it only applies to private foundations. The ruling involved private foundation grants to an organization that was not a private foundation to provide scholarships only to children of a particular employer. The private foundation was required to obtain advance approval of the selection process of the scholarship recipients or be subject to a tax under Section 4945 (See Attachment E).

In the case of The University of Mississippi Foundation, there was never any attempt to qualify the gift in question as a nontaxable scholarship nor as a nontaxable gift. The recipients of this gift were all provided IRS Form 1099's showing the amount of the distribution as taxable, and it was properly reported by each. Furthermore, if any advance approval is required before a private foundation makes a grant, it is the business of the granting

foundation to obtain the approval, not the responsibility of The University of Mississippi Foundation. The University of Mississippi Foundation is not subject to Chapter 42 of the Code and, hence, Revenue Ruling 81-217 is not relevant. The University of Mississippi Foundation strongly denies that any of its actions could result in additional taxes or penalties to anyone as charged by PEER.

The PEER staff statement that it "determined" that the Chancellor signed the name of the Foundation Treasurer on certain checks contains incorrect insinuations. Since all University of Mississippi Foundation checks require two signatures (the Treasurer and the Secretary), it was the common practice that when one of the signees was absent (in this case the Treasurer was out of town), the Chancellor would sign the name of the absent individual and clearly put his initials by the signature. The PEER investigator had only to read these rather large letters on the checks to see the occasions when this was done. If both signatory officials were absent, checks were not generated until at least one returned.

Two years ago, at the Chancellor's request, The University of Mississippi Foundation Board, in consultation with Arthur Andersen & Company, identified and officially approved alternate signature agents other than the Chancellor for both the Secretary and Treasurer of the Foundation.

5. **PEER Allegation:** University officials have not disclosed all information required in annual information returns filed with the Internal Revenue Service.

University of Mississippi Foundation Response:

The University of Mississippi Foundation employs Arthur Andersen & Company, one of the preeminent national accounting firms in the world, to perform the annual audit of the University of Mississippi Foundation and to prepare all tax returns that are due. The auditors spend approximately two weeks on campus during every year's audit reviewing all information they deem necessary. Foundation staff meet with the auditors regularly during this period of time and routinely answer any questions posed by the accounting firm. Much of the data is obtained through an audit of the financial records, but other relevant data are gathered in the form of questionnaires or oral inquiry.

The University of Mississippi Foundation Board relies on Arthur Andersen to know its job and to prepare the annual

tax return properly. The University of Mississippi Foundation has always disclosed all information requested by Arthur Andersen & Company during the audit and during the preparation of the annual tax return. It is wrong to suggest that the Foundation staff failed to answer correctly all questions asked.

6. **PEER Allegation:** Mississippi public university foundations routinely contract with businesses in which their board members have significant financial interests.

University of Mississippi Foundation Response:

The PEER report states that the annual audit for fiscal years 1990, 1991, and 1992 was performed by the national accounting firm of Arthur Andersen & Company while a partner in the firm served on the Board of Directors of The University of Mississippi Foundation. This allegation is misleading. A partner of Arthur Andersen is an honorary non-voting member of The University of Mississippi Foundation Board but has never been a voting member of the Foundation Board. He meets with the Foundation Board on occasions as an alumnus representing the School of Accountancy, but he has always been listed as a nonvoting "honorary member." This individual resigned from Arthur Andersen in the fall of 1992.

The PEER Report suggests that "a foundation board member comes very close to that of a public servant."

Mississippi law differs from this suggestion. A public servant is defined specifically to be:

(i) Any elected or appointed official of the government;

(ii) Any officer, director, commissioner, supervisor, chief head, agent, or employee of the government or agency thereof, or of any public entity created by or under the laws of the state of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds; or

(iii) Any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the government. Miss. Code Ann. Sec. 25-4-101.

Foundation Board members are not elected or appointed officials of the government; they are not officers, directors, agents or employees of The University of Mississippi; and they do not receive a salary or expenses paid in whole or in part out of any public funds authorized to be expended by the government. Therefore, these private Foundation Board members cannot be "public servants." Also, there is nothing in the Mississippi Code or any case law of this state which attempts to give definition to the concept of being "very close" to being a public servant. In conclusion, Foundation Board members are not subject to Miss. Code Ann. Sec. 25-4-101.

P.O. BOX 249, University, MS 38677
(601) 232-5944

ATTACHMENT A

6723116

OXFORD, MS 38655-2611

TATEMENT FOR CALENDAR YEAR 1992

DATE	ACCOUNT DESCRIPTION		AMOUNT
/31/92	OLE MISS ASSOCIATES	CASH	84.00
2/19/92	FRIENDS OF THE LIBRARY ENDOW	CASH	100.00
2/29/92	OLE MISS ASSOCIATES	CASH	84.00
3/31/92	OLE MISS ASSOCIATES	CASH	84.00
+/30/92	OLE MISS ASSOCIATES	CASH	84.00
5/31/92	OLE MISS ASSOCIATES	CASH	84.00
6/30/92	OLE MISS ASSOCIATES	CASH	84.
7/31/92	OLE MISS ASSOCIATES	CASH	84.00
8/31/92	OLE MISS ASSOCIATES	CASH	84.00
9/30/92	OLE MISS ASSOCIATES	CASH	84.00
0/26/92	ACCOUNTANCY ALUM/ 10/10	CASH	100.00
0/31/92	OLE MISS ASSOCIATES	CASH	84.00
1/30/92	FRIENDS OF THE MUSEUM	CASH	35.00
1/30/92	OLE MISS ASSOCIATES	CASH	84.00
2/31/92	OLE MISS ASSOCIATES	CASH	84.00
	TOTAL CONTRIBUTIONS		1,243.00

It is with sincere appreciation that I send you this summary of your total contributions during the last calendar year. I trust this statement will make your tax preparation easier.

The total contributions shown on this report reflect the total amount of your gifts for the year. If you received any items of value for your contributions, the fair market value of these items should be subtracted from your total contributions in calculating your tax deductible amount. In addition, for those of you who may have made contributions which qualified you for the right to purchase athletic tickets, Section 170(L) of the Internal Revenue Code of 1986 allows a charitable deduction of eighty percent (80%) of that gift. Please consult your own tax advisor for determining your proper charitable deduction.

Of us at the University thank you for your continuing generosity and support.

Sincerely,

Don L. Fruge

Don L. Fruge
Vice Chancellor for University Affairs

ATTACHMENT B

BRUNINI, GRANTHAM, GROWER & HEWES
ATTORNEYS AT LAW

GEORGE P. HEWES, III
NEWT P. HARRISON
RICHARD W. DORTCH
LEIGH B. ALLEN, III
EDMUND L. BRUNINI, JR.
LAWRENCE E. ALLISON, JR.
CHARLES P. ADAMS, JR.
W. DAVID WATKINS
HOLMES S. ADAMS
WILLIAM L. SMITH
JEFFERSON D. STEWART
ROBERT D. DRINKWATER
CHRISTOPHER A. SHAFFLEY
R. DAVID KAUFMAN
JOHN E. MILNER
R. WILSON MONTJOY II
WALTER S. WEEMS
JAMES T. THOMAS, IV
JAMES A. KEITH
LOUIS C. FULLER
WATTS C. UELTSCHEY
W. RODNEY CLEMENT, JR.
BROOKS EASON
JOHN E. WADE, JR.
J. PERRY SANSING
LYNNE K. GREEN
JAMES L. MALFORD
GRANVILLE TATE, JR.
ANNE C. SANDERS
JAMES W. YOUNG, JR.
PHILIP M. REEVES
CHERI D. GREEN
STEPHEN J. CARMODY
DORIAN E. TURNER
PAMELA W. DILL
JOSEPH E. VARNER, III
R. DAVID MARCHETTI
KATHRYN R. GILCHRIST
EUGENE R. WASSON
OTTOWA E. CARTER, JR.
P. DAVID ANDRESS
B. BLAKE TELLER
SHIRLEY T. KENNEDY
MICHAEL R. GRAVES
JOHN D. GIDDENS

1400 TRUSTMARK BUILDING
248 EAST CAPITOL STREET
JACKSON, MISSISSIPPI 39201

MAILING ADDRESS
POST OFFICE DRAWER 119
JACKSON, MISSISSIPPI 39205

TELEPHONE
601-948-3101

FACSIMILE
601-960-6902

EDMUND L. BRUNINI
(1911-1992)

R. GORDON GRANTHAM
(1912-1986)

JOHN R. HUTCHERSON
(1930-1990)

JOHN M. GROWER
OF COUNSEL

February 26, 1993

Gerald Turner
Chancellor
University of Mississippi
University, MS 38677

Dear Chancellor Turner:

I am writing this letter in my capacity as Vice President and President-Elect of Annandale Golf Club in the Jackson Metropolitan area. Our President, John Black, is out of town, and I am pitching in for him.

As you know there is public comment and review of the various private funding of certain expenses associated with the major Universities in this State, and the expectation would be that this public scrutiny will result in any number of factual inaccuracies. We thought it would be helpful if your University had definitive information on file as to the precise situation at our club.

Several years ago, thirteen University supporters made, and specifically earmarked, a contribution to The University of Mississippi Foundation for a membership at this club. This membership was designated for the use and benefit of the Director of Athletics. As is customary with all private memberships in clubs of this sort, our Bylaws require that a specific individual be named as the "member," even though the beneficial owner is a corporate or business entity, and even though that entity intends to assign the membership to a standing position, such as its President, or public relations director. We were advised that Warner Alford, as the current Director of Athletics, would be the member designated to the Foundation's membership. Both the individual designated and the "position" can be changed at the Foundation's request.

All of us associated with the Club can attest to the salutary effects of that membership on the University's general well being. It is clear that this membership provides congenial access to many strong and important benefactors of the University's mission, and

the Foundation has used this arrangement wisely and to the general edification of Ole Miss.

Sincerely,

Ed L. Brunini, Jr.
Vice President
Annandale Golf Club

ELB,Jr.:tsw

ATTACHMENT C

people of the United States and foreign
eir mutual knowledge. To achieve
to three categories of individuals,
rs, and professors and teachers.
selected by a Board of Foreign Scholar-
bers appointed by the President, which
the Fulbright Act. They receive grants
one-year periods and are calculated to
ses of a year of study abroad. Each
ject of study and he is under no obliga-
either the home or host government at
e of study. The student's grant is de-
, tuition, travel expenses, for himself
ular country and, to a limited extent,
he country of assignment.
rkers are, like student grants, made for
of the individual, even though in some
ady received graduate degrees. They
ients at an advanced level and with a
ace. The research carried on by these
is selected by the research scholars for
any obligation on their part to perform
l States or any foreign government or
mitted by these grantees to the State
of making available the results of a
hich are of assistance in administering
onstitute consideration for the grants.
one-year periods and conform to the
is reasonable travel time. The amounts
odest and reasonably calculated to re-
e value of the projects.
chers who receive grants are selected
ips on the basis of personal qualifi-
s representatives of the United States
ear grants which may be renewed under
e grantee is under no employment obli-
the host country at the end of his grant
n to teach at an academic institution in
ofessors and teachers are defined by the
and the Department of State as "basic

three categories mentioned above may
ant under the United States Informa-
ge Act of 1948, 22 U.S.C. chapter 18

Revenue Code of 1954 provides that,
statute, gross income means all income

permits an individual to exclude from
certain conditions and limitations,
ip at an educational institution or as
the value of contributed services and
able is any amount received to cover
lerical help, or equipment, which are

incident to the scholarship or fellowship grant, but only to the extent that such amount is so expended by the recipient.

In the case of individuals who are not candidates for degrees, section 117(b)(2) of the Code provides that the exclusion applies only if the grantor is an organization of the type described in section 117(b)(2)(A) and is limited to an amount not in excess of $300 per month times the number of months for which the recipient received amounts under the fellowship grants during the taxable year. Any excess is includible in gross income. No exclusion is allowable beyond a total of 36 months, whether or not consecutive. The grants under consideration are made by the United States Government and are of the type described in section 117(b)(2)(A) of the Code.

Section 1.117-4(c)(2) of the Income Tax Regulations provides, in part, that amounts paid or allowed to, or on behalf of, an individual to enable him to pursue studies or research are considered to be amounts received as a scholarship or fellowship grant for the purpose of section 117 of the Code, if the primary purpose of the studies or research is to further the education and training of the recipient in his individual capacity, and the amount provided by the grantor for such purpose does not represent compensation or payment for services.

It is held that the amounts received for study and research abroad, under the Fulbright Act and the United States Information and Educational Act of 1948, by United States citizens are scholarship or fellowship grants within the meaning of section 117 of the Code. In the case of candidates for degrees, whether students or research scholars, such amounts are wholly excludable from gross income under section 117(a) of the Code. The amounts received by individuals who are not candidates for degrees, whether students or research scholars, are excludable to the extent provided by section 117(b)(2)(B) of the Code.

On the other hand, amounts paid to United States citizens for lecturing or teaching abroad are not paid to enable the recipients to pursue studies or research but are compensation for services rendered and are includible in their gross incomes under section 61 of the Code.

(Also Section 102; 1.102-1.) Rev. Rul. 61-66

Where an individual transfers an amount of money to a university to be disbursed by it to a teacher, not a candidate for a degree, specifically designated by the donor to enable the teacher to engage in independent research, such amount is not excludable from the gross income of the recipient as a fellowship grant under section 117 of the Internal Revenue Code of 1954. However, such amount is, under certain conditions, excludable from the gross income of the recipient as a gift under section 102 of the Code.

Advice has been requested whether an amount disbursed by a university to a faculty member, under the circumstances described below, to enable him to engage in independent research while on leave from his teaching position, is excludable from the gross income of the recipient as a fellowship grant under section 117 of the Internal Revenue Code of 1954.

In this case, *A*, an individual, forwarded a sum of money to a university with the specific instruction that it be disbursed by the univer-

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sity to *B*, a professor at the university, to enable him to engage in certain research and study in his particular field for a specified period. The recipient is not a candidate for a degree.

During the period of research and study, *B* was on leave from the university and received no pay or other remuneration from its general funds. During such period, *B* was not under any employment agreement or contract with the university or with [redacted] was not obligated to make reports to or render services for the university or *A*. The university is a tax-exempt [redacted] the type described in section 501(c)(3) of the Code.

Section 117(a) of the Code provides, in [redacted] income does not include any amount received as [redacted] and any amount received and expended to cover certain expenses incident to such fellowship grant. The term "fellow[redacted]" is defined in section 1.117–3(c) of the Income Tax Regulations to mean generally an amount paid or allowed to, or for the benefit of, an individual to aid him in the pursuit of study or research. The term does not include any amount provided by an individual to aid a relative, friend, or other individual in the pursuit of study or research where the grantor is motivated by family or philanthropic considerations. In order for an amount received by an individual who is not a candidate for a degree to be excludable from gross income as a fellowship grant, the grantor must be an organization described in section 501(c)(3) of the Code which is exempt from tax under section 501(a), the United States, or an instrumentality or agency thereof, or a State, a Territory, or a possession of the United States, or any political subdivision thereof, or the District of Columbia. See section 117(b)(2)(a) of the Code.

In the instant case, *A* specifically designated *B* as the recipient of the money which he transferred to the university and the university had no control over the disposition of such funds. Thus, the university acted merely as a conduit to disburse the funds to *B* for *A*. Since *A* as an individual, is the grantor, it is held that no part of the amount received by *B* is excludable from his gross income as a fellowship grant under section 117(a) of the Code.

However, section 102(a) of the Code provides that gross income does not include property acquired by gift. Since the university acted merely as a conduit in disbursing the money transferred by *A* to *B*, and since the facts indicate that such transfer was motivated solely by philanthropic considerations, it is further held that the amount transferred constituted a gift within the meaning of section 102(a) of the Code and is excludable as such from *B*'s gross income.

Accordingly, it is held that the amount received by *B* in this case is not includible in his gross income for Federal income tax purposes. Since the gift was made to *B*, an individual, it is not deductible by *A*, the donor, under section 170 of the Code. However, the amount involved is subject to the Federal gift tax imposed by section 2501 of the Code upon transfers of property by gift by individuals.

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26 CFR 1.117–3: Definitions.

A stipend received under Title IV of the National Defense Education Act of 1958. See Rev. Rul. 61–53, page 21.

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PART V.—DEDUCTIONS F

SECTION 151.—ALLOWAN
PERSONAL

26 CFR 1.151–2: Additional exe
dependents.

Effect of a stipend received unc
Education Act
below.

SECTION 152.—DEI

26 CFR 1.152–1: General defini
dependent.

(Also Sections 117, 151, 1.117–3,

The amount of a stipend rec
IV of the National Defense E
scholarship grant which is exclu
Accordingly, such stipend allo
whether under section 152 of t
an educational institution, rece
port from his parent, for the pu
of a personal exemption allow
stipend used by the recipi
should be taken into acc
furnished more than one-half o
and children, for the purpose
personal exemption allowance.

Advice has been requested whe
visions of Title IV of the Nation
U.S.C. 463, et seq. (1958 Editi
as a scholarship grant, excludal
117 of the Internal Revenue Co
which the stipend should be tak
whether the recipient's father
support of the recipient and the
purpose of determining whether
deductions for them.

The taxpayer's son received a
IV. of the National Defense Ed
of aiding him in studying for
During the period in which the
the taxpayer provided amounts
and his wife and children.

The purpose of Title IV of th
1958 is to assist graduate studen
as teachers in colleges and u
United States Commissioner of
uals accepted for study in gradu
Act further provides that encl
provisions of Title IV of the A
the first academic year of study

ATTACHMENT D

ROBERT M. HEARIN
POST OFFICE BOX 3348
JACKSON, MISSISSIPPI 39207-3348
(601) 354-5800

October 5, 1989

Dr. Don L. Fruge
Vice Chancellor of University Affairs
The University of Mississippi
Room 112, Lyceum Building
University, Mississippi 38677

Dear Dr. Fruge:

In accordance with our telephone conversation, I am attaching hereto a Hearin Foundation check in the amount of $25,000.00.

Sincerely,

Robert M. Hearin

RMH/db

Enclosure

Please put in Chancellor's Development Fund

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ROBERT M. HEARIN FOUNDATION 8-78

NUMBER 1051

October 5 19 89

PAY TO THE ORDER OF University of Mississippi Foundation $ 25,000.00

Twenty-five Thousand and No/100 DOLLARS

Trustmark National Bank Jackson, MS

MEMO

Robert M. Hearin

:065300279: 57 5 8 30 1051

THE UNIVERSITY OF MISSISSIPPI FOUNDATION
P.O. Box 249
University, MS 38677 (601) 232-5944

DATE: 10/16/89
TYPE OF GIFT: CASH
PLG
ACCOUNT NO.
02-4-0614001003-213

ACCOUNT DESCRIPTION
CHANCELLOR'S DEVELOPMENT FUND

OFFICIAL RECEIPT NO. G61277
TOTAL AMOUNT: 25,000.00

AMOUNT
25,000.00

B003666

ROBERT M. HEARIN FOUNDATION
P.O. BOX 3348
JACKSON, MS 39207

THANK YOU FOR YOUR SUPPORT OF OLE MISS

Don L. Fruge, Executive Director

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...turn must be made for each month whether or not liability is incurred for that month. If the taxpayer ceases operations that make the taxpayer liable for the tax, the last return must be marked "Final Return."

Section 44.4412-1(a) of the regulations provides that every person required to pay the special tax imposed by section 4411 must register and file a return on Form 11-C, Special Tax Return and Application for Registry-Wagering.

Section 4901 of the Code provides that for purposes of the occupational tax imposed by section 4411, the tax year begins July 1. In the case of a person commencing any trade or business on which the tax applies, the individual shall pay a proportionate part of the annual tax from the first day of the month in which the liability for the tax commences. Section 44.4901-1(b)(2) of the regulations defines "commencing business" as a person's initial acceptance of a wager subject to the tax imposed by section 4401.

A person who has only temporarily ceased to incur liability for the wagering tax because of a seasonal suspension of business has not ceased operations that make the taxpayer liable for the tax imposed by section 4401. The taxpayer is considered to still be in the business of accepting wagers and must continue to file Form 730 each month even though no liability is reported. Furthermore, for wagering tax purposes, neither the Code nor the regulations provide that a seasonal business should be viewed as commencing each year.

...EDING

...With the exception of the first year of operation, *A* must pay the total annual (occupational) tax imposed by section 4411 of the Code. In addition, ...must file a Form 730 for each month, whether or not a liability is incurred in a particular month for the tax imposed by section 4401.

Section 4945.—Taxes on Taxable Expenditures

26 CFR 53.4945-4: Grants to individuals (Also Section 7805, 301.7805-1.)

Private foundations; taxable expenditures; scholarships to children of employees. A private foundation pays grants to an organization that is not a private foundation to provide scholarships only to children of a particular employer. The grants are grants to individuals under section 4945(d)(3) of the Code for which advance approval under section 4945(g)(1) is required, and are employer-related grants to which the guidelines of Rev. Proc. 76-47 apply.

Rev. Rul. 81-217

ISSUE

Are the private foundation grants described below grants to individuals under section 4945(d)(3) of the Internal Revenue Code, for which advance approval under section 4945(g)(1) is required and to which the guidelines of Rev. Proc. 76-47, 1976-2 C.B. 670, are applicable, or are they grants to an organization under section 4945(d)(4)?

FACTS

Situation 1.

Private Foundation *X* makes grants to *Y* to fund a number of scholarships for the college education of certain students evaluated by *Y*. *Y* is exempt from federal income tax under section 501(c)(3) of the Code and is not a private foundation under section 509(a)(1).

As part of a large independent scholarship program, *Y* evaluates all interested high school students according to its own criteria, which include performance on a qualifying examination, prior academic performance and potential leadership qualities, and recommendations from instructors. Applicants who achieve the highest rating based upon *Y*'s criteria are classified as finalists. *Y* makes its own scholarship funds available only to such finalists.

X requires that its grants first be spent on behalf of children of employees of a particular company specified by *X* who are finalists as evaluated by *Y*. However, if the number of finalists from that company are too few to exhaust *X*'s available grant funds, *Y* will make such excess funds available as grants to the next most highly rated children of employees of the company even though they are not finalists.

Situation 2.

Private Foundation *Z* also makes grants to *Y*, the organization described above. *Z*'s grants are made under the same circumstances described in *Situation 1*, except that *Z*'s grant funds may be spent only for those children of employees of a particular company specified by *Z* who are finalists as evaluated by *Y*.

LAW AND ANALYSIS

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study or other similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(d)(4) of the Code provides that a grant by a private foundation to an organization described in section 509(a)(1) is not a taxable expenditure.

Section 53.4945-4(a)(4)(i) of the Foundation Excise Tax Regulations provides that a grant by a private foundation to another organization, which the grantee organization uses to make payments to an individual for purposes described in section 4945(d)(3) of the Code, shall not be regarded as a grant by the private foundation to the individual grantee if the foundation does not earmark the use of the grant for any named individual and there does not exist in agreement, oral or written, whereby such grantor

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foundation may cause the selection of the individual grantee by the grantee organization. The regulation further provides that a grant shall not be regarded as a grant by the foundation to an individual grantee, even though such foundation has reason to believe that certain individuals would derive benefits from such grant, so long as the grantee organization exercises control, in fact, over the selection process and actually makes the selection "completely independently" of the private foundation.

Section 53.4945-4(a)(4)(ii) of the regulations provides that a grant by a private foundation to an organization described in section 509(a)(1) of the Code, which the grantee organization uses to make payments to an individual for purposes described in section 4945(d)(3), shall not be regarded as a grant by the private foundation to the individual grantee (regardless of the application of section 53.4945-4(a)(4)(i)) if the grant is made for a project which is to be undertaken under the supervision of the section 509(a)(1) organization and such grantee organization controls the selection of the individual grantee. Section 53.4945-4(a)(4)(ii) will apply regardless of whether the name of the individual grantee was first proposed by the private foundation, but only if there is an objective manifestation of the section 509(a)(1) organization's control over the selection process, although the selection need not be made completely independently of the private foundation.

Section 53.4945-4(a)(4)(iv) of the regulations, which illustrates the operation of section 53.4945-4(a)(4)(i) through (iii), describes examples in which private foundations provide the funding for specific research projects carried out by individuals under the supervision of universities.

Section 4945(g)(1) of the Code provides that section 4945(d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that the grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Rev. Proc. 76-47, 1976-2 C.B. 670, provides guidelines for determining whether a private foundation's scholarship program that is employer-related satisfies the requirements of section 4945(g) of the Code.

Section 2 of Rev. Proc. 76-47 provides that an employer-related program is a program that treats children of some or all of the employees of a particular employer as a group from which grantees of some or all of the foundation's grants will be selected, limits the potential grantees for some or all of the foundation's grants to children of employees of a particular employer, or otherwise gives such children a preference or priority over others in being selected as grantees.

In both *Situations 1* and *2*, *Y* does not select the students who receive scholarships "completely independently" of the grantors, *X* and *Z*. Both *X* and *Z* require *Y* to expend the grant funds only for the children of employees of the particular company specified by the grantor. As a result, *Y* is not, in fact, the grantee of the scholarships. Rather, *Y* merely functions as an evaluator for the grant programs of *X* and *Z*. Thus, the grant programs of *X* and *Z* are not within the scope of section 53.4945-4(a)(4)(i) of the regulations.

Also, in both *Situations 1* and *2*, the grant programs of *X* and *Z* are not within the scope of section 53.4945-4(a)(ii) of the regulations. The expenditures made by *Y* are not a project within the meaning of that section because they do not provide for *Y* to undertake or supervise any research or study as contemplated by that section. Additionally, there is no objective manifestation of *Y*'s control over the process of selecting the students to receive the scholarships because both *X* and *Z* limit *Y* to considering only children of employees of the particular companies specified by *X* and *Z* rather than merely suggesting that such children be given consideration. As a result, *Y* is not, in fact, the grantee of the scholarships. Rather, *Y* merely functions as an evaluator for the grant programs of *X* and *Z*.

HOLDINGS

The grants described above are grants to individuals under section 4945(d)(3) of the Code for which advance approval under section 4945(g)(1) is required. Further, because the grants are limited to children of employees of a particular employer, they are employer-related grants to which the guidelines of Rev. Proc. 76-47 are applicable.

PROSPECTIVE APPLICATION

Pursuant to the authority contained in section 7805(b) of the Code, the conclusion of this revenue ruling will not be applied before March 8, 1982, to enable any private foundation participating in a scholarship program of the type described herein to obtain the necessary advance approval of its grant-making procedures as required by section 4945(g)(1) of the Code. If a private foundation fails to obtain advance approval of such a scholarship program within the time provided, any grants awarded and paid pursuant to such program subsequent to the effective date of this revenue ruling will constitute taxable expenditures subject to the taxes imposed by section 4945(a). However, the payment by a private foundation of a fix-sum grant awarded prior to March 8, 1982, but not paid until after March 8, 1982, will not constitute a taxable expenditure. See Rev. Rul. 81-46, 1981-1 C.B. 514.

See section 53.4945-4(d) of the regulations and Rev. Proc. 80-24, 1980-1 C.B. 658, for the applicable procedures to be followed in making a request for advance approval of grant-making procedures.

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26 CFR 53.4945-4 Grants to individuals.

Private foundations; taxable expenditures; compensation to re-

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search assistants by an individual grantee. The payment of compensation to research assistants by an individual grantee of a private foundation, where the grantee controls the selection of these persons independently of the grantor private foundation and where the private foundation's grant-making procedures satisfy the requirements of section 4945(g) of the Code, does not constitute a grant within the meaning of section 4945(d)(3).

Rev. Rul. 81-293

ISSUE

Is payment of compensation to research assistants by an individual grantee of a private foundation a grant to an individual by the private foundation within the meaning of section 4945(d)(3) of the Internal Revenue Code?

FACTS

The foundation is exempt from federal income tax under section 501(c)(3) of the Code and is a private foundation under section 509(a). It makes grants to qualified individuals to enable them to conduct scientific research projects. The grants to the individual grantees are made by the foundation on an objective and nondiscriminatory basis within the meaning of section 4945(g) under procedures approved in advance by the Commissioner.

The foundation's grant-making procedures include a consideration of the nature of the proposed research, the number of staff needed in the performance of the research, and the amount of support needed. In most cases, the candidates propose to use a substantial portion of the grant funds to compensate individuals (either employees or independent contractors) who assist in the research projects. The grantee controls the selection of these persons and selects them independently of the private foundation. The foundation requires the grantee to file annual reports detailing the use of the grant funds and the progress made by the grantee toward completing the research project.

LAW

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purpose by such individual, unless such grant satisfies the grant requirements of section 4945(g).

Section 4945(g) of the Code provides that section 4945(d)(3) shall not apply to certain individual grants awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary or his delegate.

Section 4945(g)(3) of the Code provides that section 4945(d)(3) shall not apply to an individual grant the purpose of which is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Section 53.4945-4(a)(2) of the Foundation Excise Tax Regulations provides that the term "grants" shall include, but is not limited to such expenditures as scholarships, fellowships, internships, prizes, and awards. On the other hand, grants do not ordinarily include salaries or other compensation to employees.

ANALYSIS

Generally, grants made by a private foundation to individuals for the purpose of conducting scientific research constitute grants made to achieve a specific objective within the meaning of section 4945(g)(3) of the Code. Thus, such grants will not constitute taxable expenditures where the foundation's grant-making procedures satisfy the requirements of section 4945(g) and section 53.4945-4(c) of the regulations.

This private foundation's grant-making procedures have been approved in advance and are not taxable expenditures except for the issue of compensation paid to the individual grantee's research assistants.

Amounts paid by a foundation's grantees to his or her research assistants, who are selected independently of the foundation, do not constitute grants within the meaning of section 4945(d)(3) of the Code and section 53.4945-4(a)(2) of the regulations. Therefore, there is no requirement that the procedure for selecting the research assistants be approved under section 4945(g).

HOLDING

Compensation paid to a research assistant by an individual grantee of a private foundation, under the circumstances described above, is not a grant to an individual within the meaning of section 4945(d)(3) of the Code.

ADVANCE APPROVAL OF GRANT MAKING PROCEDURES

Even though a private foundation considers its grant making program to fall within the scope of this revenue ruling, it must request advance approval of its procedures in accordance with section 53.4945-4(d) of the regulations.

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26 CFR 53.4945-4: Grants to individuals.

Clarification of Rev. Proc. 76-47, 1976-2 C.B. 670, and Rev. Proc. 80-39, 1980-2 C.B. 772, which respectively provide guidelines to be used in determining whether educational grants made by a private foundation under an employer-related grant program qualify as scholarships or fellowship grants subject to the provisions of section 117 of the Code, and whether educational loans made by a private foundation under an employer-related grant program are taxable expenditures under section 4945. See Rev. Proc. 81-65, page 690.

Chapter 43.—Qualified Pension, etc., Plans

Section 4971.—Taxes on Failure to Meet Minimum Funding Standards

Procedures for requesting a waiver of the excise tax imposed on an accumulated funding deficiency. See Rev. Proc. 81-44, page 618.

Chapter 45.—Windfall Profit Tax on Domestic Crude Oil

Subchapter A.—Imposition and Amount of Tax

BEST COPY AVAILABLE

A PEER MANAGEMENT REVIEW OF UNIVERSITY FOUNDATIONS

Institutional Response

University of Southern Mississippi

March 12, 1993

THE UNIVERSITY OF SOUTHERN MISSISSIPPI
OFFICE OF THE PRESIDENT

March 6, 1993

Dr. W. Ray Cleere, Commissioner
State Institutions of Higher Learning
3825 Ridgewood Road
Jackson, MS 39211-6453

Re: PEER Committee Report of February 12, 1993

Dear Dr. Cleere:

Enclosed please find the response to the PEER study of The University of Southern Mississippi's Foundation and Intercollegiate Athletics.

If you have any questions about this response, please do not hesitate to contact me.

Yours very truly,

Aubrey K. Lucas
President

AKL/cag

227

Box 5001 • Hattiesburg, Mississippi • 39406-5001

UNIVERSITY OF SOUTHERN MISSISSIPPI

RESPONSES TO PEER COMMITTEE REPORT

The University of Southern Mississippi Foundation is a private, not for profit organization chartered by the State of Mississippi as a charitable organization. The primary function of the Foundation is to provide private support for The University of Southern Mississippi. It is governed by a board of directors and a committee system.

Development Office operations are funded in part by the regular University budget with approval of the Board of Trustees of State Institutions of Higher Learning. For fiscal year 1992 this funding amounted to $241,003. Using these funds and others provided by the Foundation, the Foundation has generated $3,033,762 (92%) in restricted funds and $263,806 (8%) in unrestricted funds for a total of $3,297,569 for fiscal year 1992, a cash return of approximately 3806% on the University funds. In addition to these cash gifts, the Foundation also received pledges and planned gifts. Within the past four years, these planned gifts cumulatively total $10,040,617.

Allegation No. 1: The Board of Trustees of the Institutions of Higher Learning fails to manage and control the activities of unive y officials with regard to university

foundations (p. 27 of advance copy).

Response No. 1: The Board of Trustees of the Institutions of Higher Learning approved use of university funds by the Development Office. For fiscal year 1992 a total of $241,003 was budgeted from USM funds with Board approval. University personnel assigned to the Development Office are employed under the same personnel policies and procedures approved by the Board of Trustees for all other USM employees.

Allegation No. 2: University foundations have not been accountable for their activities, particularly the expenditure of unrestricted funds (p. 33 of advance copy).

Response No. 2: The University of Southern Mississippi Foundation is a private, not for profit organization chartered by the State of Mississippi as a charitable organization. The primary function of the Foundation is to provide private support for The University of Southern Mississippi. It is governed by an uncompensated, voluntary board of directors and a committee system. The budget for the expenditure of all unrestricted funds is approved and monitored by the Executive and Finance Committees of the Foundation. Of these unrestricted funds, approximately 40% is expended for

scholarships and academic support. The remaining unrestricted funds are spent primarily to support the operation of the Foundation.

Of the present forty-one officers and members of the Board of the Foundation, only two University of Southern Mississippi employees are voting members. Therefore, Foundation management is dominated by private citizens and not by University officials, as stated in the PEER report. These Foundation Board members are well aware of, and execute with due regard, their fiduciary responsibilities as imposed by the Foundation charter and by-laws.

While PEER considers annual financial audits a necessary element of accountability for the Foundation Board, such audits do not provide assurance regarding the effective and efficient management of the Foundation. The USM Foundation concurs that annual financial audits are indeed a necessary element of accountability for the Foundation Board. Financial audits conducted in accordance with generally accepted auditing standards are not designed and cannot be relied upon to provide assurance regarding the effective and efficient management of any organization. Performance audits are not conducted in conjunction with financial statement audits. However, as a result of the audit procedures applied to the financial statements of the Foundation, a number of recommendations have been made and implemented regarding the effectiveness and efficiency of the management of the Foundation.

Additionally, because the Board of Directors and various committees of the Board of the USM Foundation closely scrutinize the operations of the Foundation, a number of internally-generated policies are implemented on a regular basis. For example, the USM Foundation has continually streamlined its business operations by implementing accounting and internal control functions which increase efficiency. The Executive Committee, Finance Committee and Investment Committee receive regular reports of Foundation accounting and investing activities, as well as regular reports comparing actual performance to the fiscal budget. Internal interim financial statements and fiscal budget and investment performance analyses demonstrate the ability of the Foundation to provide to its Board and Committees information about the effectiveness of policies implemented by the Foundation.

Allegation No. 3: University officials receive additional compensation from the USM Foundation without IHL Board authorization (p. 34 of advance copy).

Response No. 3: Additional benefits are provided at the discretion of the Foundation Executive Board. The IHL Board of Trustees is aware of these additional benefits. The University of Southern Mississippi President receives no additional monetary compensation from the Foundation; however, the Foundation does provide the President with an automobile at a cost to the Foundation of $200.00 per month and a split-dollar life insurance annuity. On the same day that annuity was issued, the President and the

Foundation entered into an agreement under which the total amount of premiums paid by the Foundation will be recaptured by the Foundation.

Allegation No. 4: University officials use university Foundation funds to provide travel, entertainment and gifts for IHL board members and the Commissioner.

Response No. 4: The USM Foundation has annually provided from unrestricted Foundation funds a minimal amount to the Commissioner's Fund to assist the Commissioner in his responsibilities to represent The University of Southern Mississippi as well as the other state institutions of higher learning. Any expenditures from the Foundation for IHL Board members are also minimal and from unrestricted funds.

Allegation No. 5: Mississippi public university foundations routinely contract with businesses in which their board members have significant financial interests.

Response No. 5: The University of Southern Mississippi Foundation is a private corporation; not a public institution. Those Foundation Board members who are not university employees are not public officers or public servants. It is true that two members of the Foundation Board are employed by banks with whom the Foundation does business. However, neither of those Board members is in any position to determine

with which banks the Foundation does business.

Investment relationships with banks are determined on a bid basis rather than any individual's relationship with any financial institution. As mentioned in the PEER report, one Foundation Board member's advertising firm produced an annual report for the Foundation "at a very substantial discount." That "very substantial discount" was approximately $15,000.00--a savings that benefitted the Foundation, and indirectly, the University.

Allegation No. 6: University officials do not comply with all applicable Internal Revenue Service laws and regulations for nonprofit corporations in the administration of Mississippi's public university Foundations.

Response No. 6: This allegation is broad and vague. The more specific allegations of the PEER Committee Report are addressed in the following three Responses.

Allegation No. 7: University officials did not disclose that the Foundation transacts business indirectly with Foundation board members.

Response No. 7: The USM Foundation contends that it has properly reported all

arrangements with related parties on Internal Revenue Service Form 990. All banking relations and business transactions with companies owned or managed by Foundation Board members are at arm's length and disclosed in accordance with the Foundation Board's understanding of disclosure requirements of the Internal Revenue Service.

Allegation No. 8: University Foundation did not disclose on form 990 the fact that the University provides staff and facilities at less than fair market value or at no charge.

Response No. 8: The University of Southern Mississippi Foundation and the University Development Office are operated in facilities on the University of Southern Mississippi campus in Hattiesburg by employees of the University of Southern Mississippi and paid from the University budget approved by the Board of Trustees of Institutions of Higher Learning.

The following is an excerpt of the filing instructions for Internal Revenue Service Form 990, Return of Organizations Exempt from Income Tax:

> "Because Form 990 is open to public inspection, you may want the return to show contributions received in the form of donated services or the use of materials, equipment, or facilities at less than fair rental value."

The instructions continue:

"The IRS does not require any organization to keep such records."

The USM Foundation does not consider the disclosure of any University monetary support or use of University buildings to be a required disclosure for Internal Revenue Service Form 990.

Allegation No. 9: University officials failed to report expenditures for lobbying activities.

Response No. 9: Prior to 1992, the USM Foundation took the position that expenses attributable to governmental relations did not constitute lobbying expenditures as defined by the Internal Revenue Code and, therefore, were not reportable on Internal Revenue Service Form 990, Schedule A, Part III, Line 1.

However, after further review, it was decided that, beginning with fiscal year 1992, all Forms 990 filed with the Internal Revenue Service would contain a brief statement clarifying expenditures for governmental relations.

Allegation No. 10: University officials make no effort to inform donors that athletic-related contributions to the Foundation resulting in preferred seating at athletic events

are not fully tax-deductible.

Response No. 10: The responsibility for notification of donors regarding this limitation has not been consistently disclosed. This inconsistency will be rectified at once.

Allegation No. 11: USM's Athletic Director diverts athletic department advertising revenues into the university Foundation accounts over which he has full discretion.

Response No. 11: The Patron Eagle fund consists of advertising revenues from a billboard paid for by private donations. The purpose of the billboard is to generate additional supporting funds for the athletic department. The account at the Foundation to which the funds are deposited is an agency account. Disbursements from this account are limited to properly documented expenditures for the intended beneficiary--the athletic department at the University of Southern Mississippi.

Allegation No. 12: Head football and basketball coaches received additional compensation, most of which is in cash and comes from outside entities, in violation of MCA Section 25-4-105(1).

Response No. 12: This additional compensation from outside sources, such as television

and radio talent fees and endorsement contracts, is normal and expected in intercollegiate athletics. Institutions which do not allow these additional benefits cannot be competitive in employing athletic personnel.

The NCAA requires that all athletically related revenue be reported annually to the institution's Chief Executive Officer and the NCAA. The University of Southern Mississippi is in compliance with this requirement.

Allegation No. 13: USM athletic staff was awarded bonuses for post-season bowl game appearances, in violation of state Constitution Section 96.

Response No. 13: The additional payments to athletic personnel for post season bowl game appearances is customary and expected in intercollegiate athletics. As such, these arrangements are within the contemplation of the parties at the time the Board contracts are executed, thereby receiving implied Board of Trustees approval. When these post season bowl game appearances occur, the additional payments are approved by the Board of Trustees. These appearances typically occur during the Christmas holidays.

Allegation No. 14: The university's Athletic Director authorized funds for the travel and entertainment of university administrators and IHL Board members during bowl game

appearance in 1990.

Response No. 14: University administrators and IHL board members attend post season competitions, since they are expected by the sponsors to participate and represent the university in the numerous functions which surround these events. To decline an invitation from the sponsors could jeopardize future invitations to these competitions. Likewise, as with any university function of this scale, additional department personnel are required to attend to the innumerable details involved in travel, accommodations, and representation of the university.

A PEER MANAGEMENT REVIEW OF UNIVERSITY FOUNDATIONS

Institutional Response

Alcorn

State

University

March 12, 1993

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ALCORN STATE UNIVERSITY
LORMAN, MISSISSIPPI 39096-9402

OFFICE OF THE PRESIDENT

March 4, 1993

Dr. W. Ray Cleere
Commissioner of Higher Education
Mississippi Institutions of
Higher Learning
3825 Ridgewood Road
Jackson, MS 39211-6453

Dear Dr. Cleere:

We are pleased to enclose Alcorn State University's response to the report of the PEER committee on the Alcorn State University Foundation, Incorporated.

If additional information is needed, kindly let me know.

Sincerely,

Walter Washington

Walter Washington
President

WW:mti

Enclosure

RESPONSE OF ALCORN STATE UNIVERSITY TO THE REPORT OF THE PEER COMMITTEE ON THE ALCORN STATE UNIVERSITY FOUNDATION, INCORPORATED

Submitted by:

Walter Washington
President
Alcorn State University

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Response of Alcorn State University
to the Report of the PEER Committee
on the Alcorn State University Foundation, Incorporated

In a white paper by Royster C. Hedgepeth entitled "Perspectives on the Current Status of and Emerging Policy Issues for Foundations of Public Institutions," prepared for the Association of Governing Boards the following statement is made:

> The assertive role of university-related foundations is a relatively recent phenomenon. With a few notable exceptions, foundations which are the vehicle for developing private resources for public universities grew from rather pragmatic beginnings. Some foundations were created to acquire property important to the institution but which would not be on the open market long enough to go through the state appropriations process. Others were set up to provide an alternative to state regulations regarding entertainment, and others to assure an arms-length relationship between state treasuries and private gifts.

The Alcorn State University Foundation was established on July 31, 1973. According to the Charter of Incorporation, the purposes for which the Foundation is created, not contrary to law, are:

a. to assist in developing and increasing the facilities of Alcorn State University for broader educational, scientific, and research opportunities for, and service to, its students, faculty, staff, alumni, citizens of the state of Mississippi, and nation, by encouraging gifts of money, works of art, historical papers and documents and other means as may seem advisable, and to this end to promote and assist all forms of education and research at Alcorn State University;

b. to receive, solicit, accept, and hold, administer, invest and disburse funds, either generally or, upon request of donors, for such educational and scientific purposes, either generally or, upon request of donors, for such specific types of education or research as may be approved by said college;

c. to acquire property, real, personal, or mixed, by purchase, gift, devise, or bequest, unconditionally, or in trust for specified purposes within the limitations of the charter;

d. to convey, re-invest proceeds and otherwise administer all such properties in trust for the purposes for which this foundation is created;

e. to use such funds and property, or the income therefrom, in aiding, supplementing, improving and enlarging the educational and research facilities and activities of Alcorn State University, including, but not limited to, supplying or supplementing such salaries of professors and research specialists as may be needed to provide and maintain highly competent faculty, to acquire and operate specialized laboratory equipment, to erect memorial buildings, to establish scholarships, to provide for advanced study by selected faculty members, and to pay expenses, fees or honoraria for visiting lecturers, and to make provisions for permanent separation of funds donated for specified purposes when so accepted by the Foundation with the approval of the college;

f. to receive gifts and make financial and other types of contributions and assistance to educational and scientific institutions, incorporated or non-incorporated, which are exempt from federal income tax;

Briefly stated, the Alcorn State University Foundation, Incorporated was created to do things for the university which cannot be done with tax funds.

The foregoing represents the basic philosophy under which the Alcorn State University Foundation, Incorporated has operated since its creation. The university, then, makes the following responses to the findings of the PEER committee regarding the Alcorn State University Foundation, Incorporated.

Finding:

Mississippi public university foundations routinely contract with businesses in which their board members have significant financial interests.

Response:

Foundation boards should consist of people who engender public confidence to the extent that donors feel that their contributions are well-managed and are used for the purpose for which they were given. For this reason, the Board of the Alcorn State University Foundation, Incorporated is composed of leading business leaders from throughout the state of Mississippi. Some of these business leaders are bank presidents or high ranking banking officials. These business leaders also regularly contribute to the foundation.

The Alcorn State university Foundation, Incorporated has not viewed its non-university board members as public servants.

Finding:

University officials do not comply with all applicable Internal Revenue Service laws and regulations in the administration of Mississippi's public university foundations.

Response:

The Alcorn State University Foundation, Incorporated has filed the appropriate IRS form 990 each year since its establishment. We have supplied information as required to the best of our knowledge. Certainly, there has not been a deliberate effort not to disclose all information requested on the form. The Alcorn State University Foundation, Incorporated was given a site review for compliance by the Internal Revenue Service in 1990 and the report indicated that the IRS would continue to recognize the exemption status of the foundation under IRC Section 501(c)(003).

Finding:

University officials receive additional compensation from university foundations without IHL board authorization.

Response:

On August 30, 1989, Dr. W. Ray Cleere, Commissioner of Higher Education, Mr. Gil Israel, Director of Risk Management and Personnel Services of the State Institutions of Higher Learning, and representatives from Equitable Variable Life Insurance Company met with the executive committee of the Alcorn State University Foundation, Incorporated to present a proposal on a combination annuity-insurance program for the chief executive officer of Alcorn State University. We were assured by Dr. Cleere that all of the other foundations were participating in the program for their respective institutional chief executive officer. The executive committee received the report and took the matter under advisement.

On March 6, 1990, Mr. Paul Fugate reviewed the proposal which had been presented on August 30, 1989 by the representatives of the Equitable Variable Life Insurance Company with the foundation executive committee. After lengthy discussion, the executive committee made a recommendation that the foundation participate in an annuity program for the president of Alcorn State University. Rather than pay an annual premium of $20,000 (which would be returned to the foundation) as had been proposed by Equitable, the Board decided to make an initial investment of $50,000 for an annuity for the president of Alcorn State University with the understanding that the investment would be returned to the Foundation upon the president's retirement and he (the president) would receive the income the investment

had accumulated up to the time of his retirement. It should be noted that the president of Alcorn State University was not present at the meeting when this matter was discussed or voted on. He in no way influenced the decision of the Board. The Board felt very strongly that some recognition should be given to the president of Alcorn State University upon his retirement for his long years of dedicated service to the university.

Finding:

University officials use university foundation funds to provide travel, entertainment and gifts for IHL board members and the Commissioner.

Response:

Each university under the Board entertains the Board either on campus or in Jackson at one of the monthly Board meetings once per year. This entertainment provides an opportunity for other administrators and/or faculty to meet and interact with the Board. It also provides an opportunity for the Board to be exposed to some of the talent of students and faculty as well as meet friends and supporters of the university. The Alcorn State University Foundation spent $2,258 entertaining the Board during the period covered by the review. We believe this is a wise use of foundation funds.

Dr. Joe A. Haynes, a former member and past president of the Board of Trustees of State Institutions of Higher Learning and an alumnus of Alcorn State University, asked the university to pay his travel to attend a meeting of the Alcorn State University National Alumni Association. In order to comply, the university requested funds from the foundation to pay for his travel and registration.

Finding:

Additional annual compensation provided to head coaches.

Response:

Alcorn State University has not been able to identify any additional compensation to head coaches from outside sources. The university receive a grant each year from the National Collegiate Athletic Association (NCAA) to conduct the National Youth Sports Program (NYSP). Several coaches (including head coaches) work in this program. They relinquish vacation time and are paid for working in the NYSP. It should be noted that the funds come directly to the university and coaches are paid by the university not directly by the NCAA. Additional compensation is reported to the Board and/or approved by the Board as required by Board policy.

Institutional Response

Delta

State

University

March 12, 1993

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DELTA STATE UNIVERSITY
Cleveland, Mississippi 38733

Office of the
PRESIDENT

March 5, 1993

TO: Dr. Ray Cleere, Commissioner

FROM: Kent Wyatt, Delta State University

SUBJECT: RESPONSE TO PORTIONS OF PEER REPORT PERTAINING TO DELTA STATE UNIVERSITY

The following is the response of Delta State University and the Delta State University Foundation to those portions of the preliminary PEER report which pertain to Delta State.

1. On October 23, 1989, in response to a suggestion from the IHL Board Office and with the support and endorsement of the Delta State University Foundation Board of Directors, the Foundation entered into a split-cost insurance program entitled "Golden Handcuffs Program." Under the agreement, the Foundation and President Wyatt share premium costs on a $300,000 life insurance policy. Premiums paid into the policy by the Foundation shall be returned to the Foundation under any of the following contingencies: (a) retirement; (b) termination of employment; or (c) death of the insured.

2. The financial audit of the Delta State University Foundation was conducted by a professional accounting firm according to specifications provided by the Foundation's governing Board of Directors. The Board of Directors considers it to be the Board's responsibility to review management practices and procedures in regard to evaluations of performance effectiveness and efficiency.

3. IRS Form 990 instructions were followed to the letter. The amount of donated services and facilities ($83,542) was representative of the value

of those services and facilities. Approximately 95 percent of usage of the facilities is for university and service area events.

4. Disbursements for legislative and governmental relations are made and recorded in accordance with guidelines established by the Foundation's governing Board of Directors.

5. Increased awareness of Internal Revenue Code Section 170 will be exercised.

6. Student fees to support intercollegiate athletic activities are assessed and utilized according to IHL Board policies and are subject to IHL Board approval. Delta State University has never contended that its intercollegiate athletic program is self-supporting.

7. In regard to Exhibit 22, the escalation of the athletic budget was part of a $400,000 overall budget escalation. The escalation was approved by the IHL Board, but auditors may not have recognized this because expenditures are approved by major object areas rather than by functions or activities.

8. In regard to Exhibit 24, amounts listed as additional annual compensation for coaches do not represent bonuses or salary adjustments, but are earnings of the individual coaches from summer camps the coaches sponsor and underwrite independent of university monies. Coaches reimburse the university for the use of facilities and services.

The Foundation believes it is fully accountable as to financial reporting and performance evaluation through its compliance with all regulations and guidelines adopted by the governing Board of Directors. The Board of Directors is charged with oversight of expenditures to ensure that expenditures meet performance objectives and comply with the designations of the donors.

pw

A PEER MANAGEMENT REVIEW OF UNIVERSITY FOUNDATIONS

Institutional Response

Jackson State University

March 12, 1993

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JACKSON STATE UNIVERSITY
JACKSON, MISSISSIPPI 39217

OFFICE OF
THE PRESIDENT

(601) 968-2323
FAX N (501) 968-2948

M E M O R A N D U M

TO: Dr. W. Ray Cleere

FROM: James E. Lyons, Sr.
President

DATE: March 5, 1992

RE: PEER Report

Please let me know if you need more informaton from JSU. I am assuming that you will handle the general issue about Foundation support for Presidents.

/bgr

Jackson State University Development Foundation, Inc.
Jackson, Mississippi

Response To PEER Report

March 2, 1993

I. THE UNRESTRICTED FUND BALANCE DEFICIT

After a thorough review of the Jackson State University Development Foundation audits by the Development Foundation staff, the following report and proposed actions are submitted with respect to the current deficit in the unrestricted fund balance of the Jackson State University Development Foundation:

A. Overview and Current Status

1. A ten-year review of the annual audit reports shows that the unrestricted fund balance deficit was initially incurred in fiscal year 1982. As of June 30, 1992, the audit report shows that the unrestricted fund balance totalled $575,783.

2. In 1988, the Development Foundation Board of Directors directed the staff to bring all financial statements current and work toward the systematic elimination of the deficit. The management and correction of this deficit was compounded by several changes in staff persons who were responsible for keeping the financial statements of the foundation current and accurate. The Development Foundation staff has successfully worked during the past four years to bring the Development Foundation's financial statements current through 1992.

3. The ten-year audit review also reveals that the 1988 fiscal year audit indicates a transfer of $300,000 from the unrestricted funds to quasi endowed unrestricted. Further review shows an apparent error by the auditors in that this transfer should have been made from the endowed restricted funds. This error has been brought to the attention of the auditing firm and a prior period adjustment has been made (see attached letter from Banks, Finley, White & Company). **The unrestricted fund deficit now has been reduced by $300,000. This correction has been made to the 1988 audit and the unrestricted fund balance from 1988 through 1992 has been adjusted bringing the current unrestricted fund balance deficit down to $246,347 as of June 30, 1992.**

B. Actions:

1. Make a report on the deficit at the 1993 Spring Development Foundation Board of Directors meeting and recommend to the board to reduce the unrestricted fund deficit to zero by authorizing the transfer of $246,347 of currently available funds from the quasi unrestricted earned income to eliminate the deficit. These funds are unrestricted and can be used for operation of the Development Foundation.

2. Review and revise the Development Foundation's fiscal policies and procedures to ensure that no future deficits are created. Present policies and procedures at the 1993 Spring Development Foundation Board of Directors meeting.

II. IRS 990 TAX RETURN STATUS

The tax form 990s for the Jackson State University Development Foundation are current and have been filed for the required years. The last 990 was filed in October of 1992 and covers the 1991-92 fiscal year. The next 990 will be due October 15, 1993.

Action: None Required

III. DEDUCTIBILITY OF DONOR CONTRIBUTIONS

A review of the Internal [illegible]enue Service guidelines regarding the advisement of contributo[illegible] the deductible amount of their contributions (under sectio[illegible]0 of the IRS Code when the contributors are receiving [illegible]ething in return for their contributions) reveals that p[illegible]cly-supported organizations and charities are encouraged [illegible] inform contributors of the deductibility of their contrib[illegible]ons. As a ru[illegible]e, only the portion of a contribution that exceeds [illegible] fair marke[illegible] alue of a "premium" or other substantial benefit given to the co[illegible]rib[illegible]r in exchange for a contribution, is considered to be a gif[illegible], an[illegible]s deductible.

Action: The Jackson State University Development Foundation will do the following:

1. Determine the fair market value of any "premium" or other substantial benefits offered to donors.

2. A statement to donors regarding the non-deductible value of benefits in all solicitations and in all receipts or other confirming documents, will be made " whether written, broadcast, telephoned or in person. In cases where insubstantial benefits are offered, a statement which says, " Under IRS guidelines, the estimated value of the benefits received is not substantial: therefore, the full amount of your payment is a deductible contribution" will suffice. These procedures will be implemented immediately by the Development Foundation.

Office of Development

BANKS, FINLEY, WHITE & CO.
CERTIFIED PUBLIC ACCOUNTANTS

March 4, 1993

Mr. Melvin Miller
Executive Secretary of JSU
Development Foundation
P. O. Box 17144
Jackson, MS 39217

Dear Mr. Miller:

At the request of Ms Fleming, we reviewed the Audited Financial Statement of the Development Foundation for the year ended June 30, 1988 and noted that a prior period adjustment should be made to the General Fund Unrestricted, and the Quasi-Endowment Funds as follows:

General Fund Unrestricted	Debit	Credit
Due from Quasi-Endowment	$300,000	
Fund Balance		$300,000
To correct the transfer of funds made in error to the Quasi-Endowment fund during FY 1988		

Quasi-Endowment Unrestricted		
Fund Balance	300,000	
Due to General Fund Unrestricted		300,000
To correct the transfer of funds made in error from the General Fund Unrestricted during FY 1988		

The above adjustments will decrease the General Fund Unrestricted Fund Fund Balance deficit by $300,000 and will decrease the Quasi-Endowment Unrestricted Fund Fund Balance by $300,000.

Should you have any questions, please give us a call.

Sincerely,

David Ewing, Jr.

David Ewing, Jr., CPA
Manager

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207 WEST AMITE STREET, SUITE 503 • JACKSON, MS 39201 • (601) 353-5423

A PEER MANAGEMENT REVIEW OF UNIVERSITY FOUNDATIONS

Institutional Response

Mississippi University for Women

March 12, 1993

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MISSISSIPPI UNIVERSITY FOR WOMEN
Columbus, MS 39701

Office of the President
Eudora Welty Hall
P.O. Box W-1600
(601) 329-7100
(601) 329-7297

March 5, 1993

Dr. W. Ray Cleere
Commissioner
Institutions of Higher Learning
3825 Ridgewood Road
Jackson, MS 39211-6453

Dear Dr. Cleere:

Attached is Mississippi University for Women's response to the PEER report.

Thank you.

Sincerely,

Clyda S. Rent
President

bs

MISSISSIPPI UNIVERSITY FOR WOMEN
RESPONSE TO THE PEER REPORT ON UNIVERSITY FOUNDATIONS
1993

- *University officials use university foundation funds to provide travel, entertainment, and gifts for IHL board members and the Commissioner.*

• In 1991 and 1992 MUW Foundation spent $350 on MUW watches to present to two RETIRING IHL board members. These were gifts of appreciation presented on behalf of the MUW alums and friends to thank the board members for their dedication to higher education in the state of Mississippi.

• The expenditure from the MUW Foundation for IHL board members or the Commissioner is the voluntary contribution that each of the eight universities makes to the Commissioner's Fund which was established in 1987. Each year a letter from the Commissioner is received stipulating the amount to be sent and noting that the money should be from private sources. In accordance with the Commissioner's letter, the Foundation issues a check payable to the Mississippi Resource Development Corporation.

• Mississippi University for Women, along with the other seven universities, hosts an annual dinner for the IHL board and university presidents. As Exhibit 16 shows, $556 was spent in 1992 on this event.

- *University officials receive additional compensation from university foundations without IHL board authorization.*

• It was noted on Exhibit 13 that MUW's chief executive received a life insurance policy, face value amount $600,000. On January 28, 1989, during the presidential selection interview, this split-dollar, variable life insurance policy was described to Dr. Clyda S. Rent verbally by the IHL Board of Trustees as part of the benefits of the presidency of MUW. After receiving the appointment as president, this insurance policy benefit was confirmed in a contract letter on February 8, 1989. The letter was sent from Dr. Cleere on behalf of the Board of Trustees. The Mississippi University for Women Foundation is the assignee on the policy. Because the Foundation pays the premiums, the Foundation has entitlement to the principal. If the split-dollar agreement is terminated, or the policy becomes payable by

reason of the owner's death, the Foundation, as assignee, will receive the cumulative totals of the premiums paid. This golden handcuff insurance policy is a mechanism used to recruit and keep outstanding administrators. THE FOUNDATION RECOUPS ALL MONEY PAID ON THESE PREMIUMS WHEN THE PRESIDENT DIES OR WHEN THE SPLIT DOLLAR POLICY IS TERMINATED, FOR EXAMPLE, BECAUSE OF TERMINATING EMPLOYMENT AT MUW.

° *University officials do not comply with all applicable Internal Revenue Service laws and regulations for nonprofit corporations in the administration of Mississippi's public university foundations.*

• The MUW Foundation employs three people: an annual fund director, an accountant, and a records clerk. All three of their salaries plus fringe benefits are paid for by the Foundation. The monies to cover these expenses are transferred to the University. The salary information is disclosed on an addendum to form 990, referenced as Statement of Program Services Rendered - Part III, under University Assistance. Their checks are cut by the University in order for them to take advantage of the state retirement system, which is a state benefit.

• The office space used by the MUW Foundation is in a state-owned building on the MUW campus. This fact was noted by the Foundation on their 1991, IRS 990 form, part VI, number 82a. The MUW Foundation complies with IRS laws in noting the salaries and the space on the 990 form.

• The MUW Foundation does not have any lobbying expenditures. As noted before, an annual contribution is made to the IHL board commissioner's discretionary fund.

° *The IHL Board of Trustees does not manage and control all public university athletic revenues and expenditures as required by Miss. Code Ann. Section 37-101-15.*

• It was noted on the report, Exhibit #24, that MUW expended $2,491 as additional annual compensation to head coaches. One coach was paid for teaching a tennis camp and the other was paid for teaching a softball camp, both camps occurred in the summer months when the coaches where not technically employed by the university. The revenue to cover these salary expenditures was generated from the fee revenues of the camp which are part of the university operating budget approved by the IHL Board. This compensation did not come from the foundation.

• On Exhibit #22, it was noted that MUW exceeded the budget for athletic department expenditures. The budget amount of $365,156, which was stated in the PEER exhibit, was a PRELIMINARY FIGURE. The FINAL BUDGET AMOUNT of $379,575 was reported to the IHL on 6/92 and approved as the official budget by IHL. The final budget amount of $379,575 minus the ACTUAL EXPENDITURES of $373,781 resulted in a BUDGET SURPLUS of $5,794 rather than an overexpenditure of budget.

March 5, 1993

A PEER MANAGEMENT REVIEW OF UNIVERSITY FOUNDATIONS

Institutional Response

Mississippi Valley State University

March 12, 1993

Mississippi Valley State University

ITTA BENA, MISSISSIPPI 38941

OFFICE OF THE PRESIDENT

(601) 254-9041 Ext. 0408

March 4, 1993

Dr. W. Ray Cleere, Commissioner
Mississippi Institutions of
Higher Learning
3825 Ridgewood Road
Jackson, MS 39211-6453

RE: PEER Report

Dear Dr. Cleere:

This will respond to the issues raised in the PEER report which related specifically to Mississippi Valley State University.

In regard to the expenditure of $398 for Christmas gifts for the IHL Board members, there will not be such expenditures in the future. The MVSU Foundation has recently outlined the type expense which may be covered by the foundation. If the expenditure of foundation funds for gifts for IHL Board members constitutes a violation of any law, state or board policy or code of ethics, I am willing to reimburse the foundation from personal funds.

It was indicated that the MVSU Foundation had not applied for tax-exempt status with the Internal Revenue Service. The appropriate application will be filed expeditiously. When the tax-exempt status is granted to the foundation, all appropriate reports will be filed.

I believe the above responds to the issues raised in the PEER report relating specifically to the MVSU Foundation. However, if you have other questions, please contact me.

Sincerely,

William W. Sutton
President

A PEER MANAGEMENT REVIEW OF ATHLETIC PROGRAMS

Institutional Response

Mississippi State University

March 12, 1993

MISSISSIPPI STATE UNIVERSITY
DEPARTMENT OF INTERCOLLEGIATE ATHLETICS
P. O. DRAWER 5327
MISSISSIPPI STATE, MISSISSIPPI 39762

March 4, 1993

President Donald Zacharias
Mississippi State University
Mississippi State, MS 39762

Dear Dr. Zacharias:

Please find attached the response of the Mississippi State University Department of Athletics and The Bulldog Foundation, Inc. to the report you requested that we prepare in order to respond to the Performance Evaluation and Expenditure Review Committee.

Upon the recommendation of legal counsel, it is requested that this document be submitted to the Peer Committee in its entirety.

If I can be of further assistance, please let me know.

Sincerely,

Larry Templeton
Director of Athletics

cc: Mr. James Hugh Ray, Holland, Ray & Upchurch, Tupelo, MS

Response of the
Mississippi State University
Department of Athletics and
The Bulldog Foundation, Inc.
to the Report of the
Performance Evaluation and
Expenditure Review Committee

March 4, 1993

The following is in response to the recommendations of the Peer Committee concerning oversight and control of University athletic programs by the Mississippi Board of Trustees for Institutions of Higher Learning (IHL) as they relate to Mississippi State University. This response will not attempt to address each recommendation on an individual basis. Rather, the response will be directed to Peer's recommendations as a whole, with reference to particular points where appropriate.

INTRODUCTION

It should be noted, at the outset, that the Peer report raises fundamental questions regarding the operation and oversight of University Athletic Department budgets. MSU has for several years operated its athletic programs "in the black" without State appropriations. The best interests of the University in question, IHL and the State, dictate that our effort be directed to maintaining and improving sound fiscal management, and that actions which would jeopardize the fiscal integrity of existing programs be avoided.

It should also be emphasized, particularly in light of certain implications and statements made by Peer, that: (a) no public or private funds have been misappropriated or misdirected by any individuals in the employ of or associated with MSU; and (b) all funds have been accounted for and have been expended responsibly and to maximum effect.

A. CONTROL OF REVENUES AND EXPENDITURES

The primary focus of the Peer Committee report is upon the control of revenue and expenditures for University athletic

programs. The Peer Committee staff contends that IHL does not manage and control all public university revenue and expenditures as required by Section 37-101 15 of the Mississippi Code of 1972, As Amended. Peer criticizes the role played by University foundations in fiscal management of the athletic programs at the state Universities. As will be shown below, this criticism is unfounded. Fiscal management by University foundations and fund raising organizations have resulted in financial success in the athletic programs far exceeding any other University departments or IHL programs. Moreover, IHL does, in fact, exercise control over the use, distribution and disbursement of all funds. Indeed, it is the University foundations which insure such management and control.

Before moving to the question of University foundations, generally, however, it is necessary to first address certain statements made regarding Mississippi State University, its athletic program, and Bulldog Communications, Ltd. The impression given by the Peer Committee report is that Bulldog Communications, Ltd., a private corporation, and the Director of Mississippi State's Athletic Department, Larry Templeton, have been obtaining substantial pecuniary benefit through the diversion of funds. The truth, available to Peer, and set forth below, is that Bulldog Communications, Ltd., a private corporation, is owned, in its entirety, by The Bulldog Foundation, Inc., a non-profit corporation, and, prior to its ownership by The Bulldog Foundation, Inc., Bulldog Communications generated no pecuniary benefit whatsoever for its stockholders.

1. <u>The Role of Bulldog Communications, Ltd. and Bulldog Publications, Inc.</u>:

The Peer Committee Report has, unfortunately, included allegations which reflect upon the integrity of Mississippi State University and its athletic program. Specifically, the Peer Committee Report contends that Athletic Department revenues have been "diverted" into a private company resulting in pecuniary benefit to the Athletic Department Director. Much of the Peer Committee's rationale and underlying support for its recommendations rest upon the impression given by the report that some wrongdoing may have occurred, or that actions have been taken which were inconsistent with state law. This response will demonstrate that the Peer Committee's factual contentions are

mistaken and, therefore, the basis for the recommendations by Peer are without support.

Bulldog Publications, Inc. was formed in 1978 to handle publication of Dawg's Bite and other publications in support of the MSU Athletic Department. Bulldog Communications was formed in 1979. One its principal founders was Carl Maddox, who was Athletic Director at the time. The company was formed to handle talent fees, television coaches' show productions, radio call in shows, etc., on behalf of the Athletic Department. The corporation was intended, and has operated, as an adjunct of the Athletic Departme[illegible] These corporations have continued to function under four dif[illegible]t Athleti[illegible]ctors. The current Athletic Director, Larry Te[illegible]on, has [illegible]volved with Bulldog Communications and Bulldog [illegible]cations [illegible]their inception and it is extremely significa[illegible]to note [illegible]in his fourteen year involvement, Templeton [illegible]s never [illegible]ed any i[illegible]vidual compensation from either corporation.

Both corpor[illegible] have file[illegible]ax returns for every year of their operation wit[illegible] Internal Revenue Service and the State Tax Commission, and have filed all appropriate 1099 forms for individuals receiving compensation from the corporation. Insofar as oversight of financial expenditures is concerned, these corporations have been subject to annual audits by both an independent accounting fi[illegible] performing an audit on behalf of the NCAA with Unive[illegible]ity Internal Audit and State Department of Audit review. During the Peer review period, MSU athletics was also audited by the Mississippi State Department of Audit. The corporations have served as mechanisms for the University's athletic program to handle "unrelated business income". This is income which includes advertising for television, radio, scor[illegible]boards, etc., and which must be reported as "unrelated busi[illegible]s income".

T[illegible] most important function which has been fulfilled by Bulld[illegible] Communications, Ltd. is compliance with By-law 2.1.2 of the NCAA Constitution, dealing with responsibility for the actions of Athletic Department staff members as well as the actions of any other individual or organization engaged in activities promoting the athletic interest of an institution. Mississippi State University does not allow individual coaches to be paid by outside groups. Rather, such groups must contract with Bulldog

Communications, Ltd., an entity subject to annual audits for the NCAA with review by internal auditors and the State Department of Audit. Bulldog Communications, Ltd. then pays the individual coach concerned.

All funds received by Bulldog Communications, Ltd. are either funds restricted by the donor for athletics and transferred directly from the Mississippi State University Development Foundation or revenue received pursuant to contract with outside sources. These funds have been received by Bulldog Communications, Ltd. in its capacity as an adjunct organization of the University. It should be emphasized again that no individual has received any pecuniary benefit or interest as a result of the operation of Bulldog Communications, Ltd.. Rather, the beneficiary of Bulldog Communications, Ltd. has been Mississippi State University and its athletic program.

Because Bulldog Communications, Ltd. is a private corporation under the laws of the state of Mississippi, its Board of Directors did not, pursuant to legal advice, believe that the Peer Committee had the authority to demand its records. These records were provided, however, at the request of the University's President, and Peer has had an opportunity to fully review the records in question. Interestingly, although full disclosure was ultimately made to Peer, Committee staff did not obtain information which would have readily disclosed the nature of the corporation and its relationship to the University. By failing to utilize the opportunity to review the records in full, the Peer Committee staff has instead made serious and unfounded allegations concerning the character and integrity of a University, its athletic program, Athletic Director, coaching staff and personnel.

2. History of The Bulldog Foundation, Inc.:

It is also interesting to note that no mention is made of the current ownership of Bulldog Communications, Ltd. and Bulldog Publications, Inc. This information also could easily have been obtained by the Peer Committee staff and included in the report.

In late November and December of 1991, Athletic Department personnel began the process of forming an organization known as "The Bulldog Foundation". The Athletic Department recognized the scope of Bulldog Communications, Ltd. as a for-

profit corporation had been expanded beyond its original intent in 1979. On February 24, 1992, the Athletic Director, Larry Templeton, met with James Hugh Ray, an attorney in Tupelo, for advice in forming a non-profit foundation. On February 26, 1992, Templeton provided Ray with Certificates of Incorporation for Bulldog Communications, Ltd. and Bulldog Publications. Several additional meetings were held in both Starkville and Tupelo discussing the formation of The Bulldog Foundation and, on May 21, 1992, Ray and an attorney from Atlanta, Georgia, James K. Hasson, came to the Mississippi State campus to discuss the formation of The Bulldog Foundation with the Board of Directors for Bulldog Communications, Ltd..

Subsequently, on June 29, 1992, Articles of Incorporation were filed with the Secretary of State for The Bulldog Foundation, Inc., a non-profit corporation. The Board of Directors for the new Foundation include: George Bryan, W. G. Holliman, Hassell Franklin, Hal Parker, Dr. George Verrall, Albert Clark, Dr. Harvey Lewis, Ranny Henson, and Larry Templeton. The corporation was organized on July 7, 1992 at which time the Articles of Incorporation and Bylaws were adopted and directors and officers were elected.

The Articles and Bylaws require a Board of Directors of at least five and not more than eleven members of which three directors must be employees of the University in order to comply with NCAA guidelines. The Athletic Director is an ex-officio member of the Board of Directors. Two additional members of the Board of Directors who are employees of the University must be employed in a department other than the Athletic Department. Both of these individuals are appointed by the President of the University. Other members are elected by the directors. The directors of the corporation receive no compensation for their services as directors.

Pursuant to meetings of the Boards of Directors of Bulldog Communications and Bulldog Publications, all stock of both corporations was transferred to The Bulldog Foundation in August, 1992.

The Bulldog Foundation, Inc., is a Mississippi non-profit corporation which has been organized and will be operated for the educational and charitable purposes of supporting Mississippi State

University and especially its Department of Intercollegiate Athletics. The Foundation has been formed principally to provide a mechanism for contributions specifically intended to support the Department of Intercollegiate Athletics at the University. In addition, the Foundation will be used to reorganize certain communications activities of the University currently conducted through the for-profit, business corporations which are now wholly owned subsidiaries of the Foundation

The first request made by the Peer staff for Bulldog Communication records did not occur until October, 1992. Again, although all information concerning the corporations and their relationships was made available to the Peer Committee staff, the staff chose to present a distorted and factually incorrect view of the circumstances.

Before moving to the question of university foundations, generally, the information concerning Bulldog Publications and Bulldog Communications and The Bulldog Foundation may be summarized as follows:

A. Contrary to the implication made by the Peer Committee staff, Larry Templeton, Athletic Director for Mississippi State University, has never received any payment or pecuniary benefit from or as a result of his position with either of said corporations.

B. Bulldog Communications and Bulldog Publications have held all net profits realized by each entity on behalf of the University, and has functioned in an ancillary capacity in connection with the University's athletic program.

C. Bulldog Communications has provided the mechanism to comply with NCAA guidelines and to insure that all money received by coaches from outside sources is subject to audit by the NCAA and University auditors.

D. Because of the scope of the programs being handled by Bulldog Communications grew beyond the capacity of that corporation, The Bulldog Foundation, Inc., a non-profit corporation, was formed and is now the owner of both Bulldog Publications and Bulldog Communications.

E. All money received by The Bulldog Foundation, Inc., Bulldog Publications, and Bulldog Communications, is held solely for the use, benefit, and promotion of the athletic programs at Mississippi State University.

Although the initial position taken by Bulldog Communications was that its records were not subject to Peer review, the records were provided to Peer Committee staff and the above referenced facts could easily have been discovered by the Peer staff and properly included in the report. Despite access being provided, the report fails to even mention the existence of The Bulldog Foundation, Inc.

3. <u>The Function of University Foundations</u>:

The criticism levied against university foundations generally by Peer, and against IHL in this regard, are that:

1. IHL allows the "diversion" of athletic program revenue into the foundations.

2. IHL does not control expenditure of this revenue.

At the outset, it should be noted that the athletic program at Mississippi State University has, utilizing national accounting procedures for athletic programs, finished for the last five successive years with surplus funds. The Peer Committee position that "no" athletic programs are in the black is inaccurate in this regard. While Peer is correct in its statement that student fees are utilized by the athletic programs at Mississippi State University, it should be noted that this is a nationally accepted method of funding and accounting, just as are sharing television and bowl game revenue. It should also be noted that, if the athletic department did not receive student fee money, students would be required to pay for admission to athletic events.

With regard to student fee money, if Mississippi State University did not charge students the $150.00 annual athletic fee, but instead charged students the regular season price for athletic events, students would be required to pay $342.00 for individual game tickets. Moreover, Peer does not make reference to the fact that, by reserving enough seating for students with free tickets, the MSU Athletic Department's lost revenue is approximately 1.

million dollars. Accordingly, the 14.7% student fee portion of athletic funding claimed by Peer is inaccurate, and is, in truth, closer to 1.68%, an immaterial amount.

Section 7-7-211(h) of the Mississippi Code of 1972 requires universities to report financial facts "in conformity with legal requirements and with generally accepted accounting principles as promulgated by nationally recognized professional organizations...." MSU Athletic Department operations are required by the American Institute of Certified Public Accountant's (AICPA) Statement of Position 74-8 and the National Association of College and University Business Officers (NACUBO) to be reported as self-supporting Auxiliary Enterprise funds for generally accepted accounting principle purposes. The AICPA states, "if an all inclusive charge is made for tuition, board, room, and other services, a reasonable distribution should be made between revenues for tuition and revenues for sales and services of auxiliary enterprises." Applying these principles, given the factual circumstances as set forth above concerning the student activity fees, results in the negligible percentage referred to.

The Peer Committee report also points out that university foundations, including The Bulldog Foundation and its subsidiary corporations, Bulldog Communications and Bulldog Publications, make use of public resources such as university staff and space. The alternative, however, is neither fiscally nor financially responsible. In order to avoid the criticism levied by the Peer Committee staff, private foundations such as the Bulldog Foundation and its subsidiaries would have to duplicate staff positions already in existence at the University. It might be argued that the foundations should cease to exist altogether and turn over all fund raising roles to University personnel. Again, this would not be financially or fiscally sound. Historically, it is well established that, in order to maximize revenue, fund raising for institutions of higher learning is best delegated to private, non-profit foundations such as those employed by the universities in this state. To do otherwise would be to take a giant step backward, with the resulting loss of substantial revenue. (For instance, although university funds support the staff of Dawg's Bite (approximately $58,000.00), the University pays no publishing fees, as would normally occur when contracting with outside publishers, to Bulldog Communications. A comparison of costs can be drawn from a similar publication, the student newspaper. This

newspaper, The Reflector, which uses only student labor, recorded publication costs of $166,957.00 for the 1992 fiscal year.

At this juncture, the second criticism mentioned above must also be addressed. That is, the Peer Committee's concern that IHL is not exercising control and management of all public university athletic revenues and expenditures as required by Section 37-101-15 of the Mississippi Code.

First, this is not true. It may be true that IHL's control and management is of a limited nature, but the universities and their respective athletic programs are well aware of the fact that they are answerable to the Board of Trustees of Institutions of Higher Learning. The primary yardstick adopted in this regard is whether or not a program is delivering successful results.

In this regard, it should be noted that the Mississippi State Athletic program is one of only thirty-two athletic programs in the entire nation that has completed the past fiscal year "in the black". It is one of only twenty-four programs in the country that has had four consecutive years of such sound fiscal management. During the past two years the athletic program has provided funds for academic areas of the university, including a $150,000.00 gift to the Library.

Second, as noted by the Peer Committee report, sports is a high visibility aspect of the operation of a university, and it is, therefore, important to safeguard this image insofar as is possible. In a public relations sensitive area such as an athletic program, financial success can be drastically impacted by adverse media reporting.

The Peer Committee report does include mention of the concerns expressed by the athletic departments concerning subjecting private, non-profit corporations to public records laws. This concern is not confined simply to confidentiality regarding the names and identities of donors. It also includes consideration for some measure of confidentiality regarding coaches' salaries. Again, this is not exempting the coaches' salaries from public oversight, it is simply providing some method of assuring that: (1) coaches' salaries are not made public record for all concerned; (2) insuring that athletic programs are given some flexibility in the manner and amount in which coaches are remunerated; and (3)

insuring that, in a competitive atmosphere, athletic programs are not required to divulge information of this nature to their competitors (i.e., other university athletic departments).

It is through the mechanism of university foundations, as recipients of private fund raising contributions and contract revenues, that a balance is struck between public relations concerns and fiscal oversight.

Third, while this response does not directly and specifically address the line items contained in the exhibits attached to the Peer report, it should be noted that several of these reports are misleading and the reliability of their financial data is highly questionable. For instance, Exhibit "21", page 50 of the Peer report leads the reader to believe that MSU athletics receives a $400,000.00 E & G yearly supplement when, in fact, MSU has not supplemented the Athletic Department with E & G funds at all since the fiscal year ended June 20, 1991.

Also, Peer's Exhibit "22", page 52, is misleading in indicating that MSU athletics exceeded its expenditure budget by $3,093,730.00 without indicating that MSU also exceeded its initial revenue budget by a comparable amount. The latter example implies a lack of fiscal management and control when, in fact, it reflects an accounting reality in that athletic departments cannot budget for revenue as unpredictable as post-season bowl game appearances and television fees.

As will be mentioned below, the fact of the matter is that the university foundations in question, including The Bulldog Foundation, provide oversight for the athletic department. The oversight provided, and the nexus established between the athletic department and the Foundation, insures that coaches' salaries are subject to fiscal management and control including internal auditing by the institution and outside auditing by an independent accounting firm for the NCAA.

B. STATUTORY CONSIDERATIONS

The Peer Committee report refers to certain statutory and constitutional provisions and expresses concern that these provisions may be in conflict with the current organization and operation of the university athletic departments. Concerns

regarding Section 37-101-15 of the Mississippi Code have been addressed above. These are primarily policy considerations under the statute, and deal with the amount and extent of control and management by IHL, as opposed to any direct conflict between present operations and statutory requirements.

The more significant references to statutory and constitutional provisions are those which involve Section 25-4-105(1) of the Mississippi Code and Section 96 of the Mississippi Constitution.

Section 25-4-105(1) of the Code provides that:

> "No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated."

Article 4, Section 96 of the Constitution provides as follows:

> "The Legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made, nor authorize payment, or part payment, of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrections."

As will be discussed more fully below, it is the Athletic Department's position that the statutory and constitutional provisions are not applicable to the facts involved in these cases.

1. **<u>The Provisions of Section 25-4-105(1) Are Not Applicable</u>**:

The Peer Committee report states two areas in which there is concern over possible conflicts with the provisions of Section 25-4-105(1). First, there is a specific concern that there may be a conflict between the actions of Larry Templeton, Athletic Director at Mississippi State University. Second, there is a more

general concern that all of the athletic programs operating through fund raising foundations may be placing coaches in apparent conflict with the provisions of the statutory section.

First, as has been set forth in detail above, Larry Templeton has not received any pecuniary benefit other than his salary and supplemental compensation as Director of the Athletic Department at Mississippi State University. Documentation confirming this exists, and has been made available to the Peer Committee staff. It is unfortunate that such questions have been raised by the Peer Committee staff and, if resort to the available documents had been made, these questions need not have been included.

With regard to the question of coaches' salaries, it should be noted that: (a) it is a nationally accepted practice to provide coaches with additional compensation for participation in post-season bowl games and/or NCAA tournaments; and (b) salary supplements, such as those referred to in the Peer Committee report, are also commonly utilized throughout the NCAA and are in the same category as supplemental salary received in the form of honoraria, research grants, consulting fees, and expert witness fees by other university employees.

There has been only one Mississippi Supreme Court decision construing and applying Section 25-4-105(1). In Mississippi Judicial Performance Commission v. Coleman, 553 So.2d 513 (Miss. 1989), the Mississippi Supreme Court held that it was a violation of the statute for a Justice Court Judge to collect fines or fees in his official capacity without remitting the same to the Justice Court clerk. There was no question but that the fees were to be paid to the clerk of the Court pursuant to Section 177A of the Mississippi Constitution.

Although there are no additional cases construing Section 25-4-105(1), any reasonable construction of the statutory language would not include, as a violation, a university professor's receipt of a consulting fee in his field of expertise. University professors are also often called upon to deliver speeches or lectures relating to their fields of expertise, and these professors receive honoraria for these services.

Professors and other university personnel receive research grant supplements to their salaries by virtue of their positions with universities.

University personnel and other state employees are often hired on a consulting basis to serve as expert witnesses in legal matters. No distinction can be drawn between these circumstances and the practice of supplementing coaches' salaries.

Indeed, if there is a difference, the difference is that there is generally no oversight of state personnel who may receive witness fees, consulting fees, or similar supplemental income, while with regard to the media contracts and product endorsement fees received by coaches, there is an interface in the form of Bulldog Communications, the wholly owned subsidiary of the Bulldog Foundation. This provides an auditing mechanism which would otherwise be absent.

2. **Section 96 of the Mississippi Constitution is Inapplicable:**

It has been suggested, in the Peer Committee report, that money paid to the coaches for post-season bowl games and NCAA tournaments, as well as money paid to other personnel in the Athletic Department are possible violation of Section 96 of the Mississippi Constitution.

First, there is some question as to whether or not the provisions of Section 96 would apply to institutions of higher learning. It has been held that provisions apply to agencies which are the creation of the Legislature. See, Farrish Gravel Company v. Mississippi State Highway Commission, 458 So.2d 1066 (Miss. 1984). Institutions of higher learning, however, are not creatures of Legislative enactment, but are entities created by virtue of Mississippi's Constitution.

Assuming, however, that Section 96 does apply to the University programs, the same rationale as set forth above would apply. Honoraria, consulting fees, expert witness fees, research grant supplements, and the like, are not considered "extra compensation" after "contract made" because the remuneration is for additional responsibilities and duties. In the same manner, the Mississippi State Highway Commission routinely grants extra

compensation, including provisions for overhead and profit, in the form of change orders.

The supplemental compensation paid to coaches and other personnel following bowl game appearances are for additional work. To require these individuals to perform extra work without additional compensation would be a major disincentive to the very success which insures increased revenue for the department.

In this regard, it should be noted that, in the case of Mississippi State personnel, the additional work in question is performed during holiday periods. For instance, during the Christmas holiday season this past year, Mississippi State University athletic staff had only two days off, Christmas Eve and Christmas Day. The year before, the University athletic staff and team spent Christmas Day at the Liberty Bowl. None of these employees was subject to a "contract made" which included working during holiday and vacation time.

Again, the amounts paid are in line with what has been paid by other institutions throughout the country, and all such supplemental payments have received approval by the Board of Trustees. Obviously, in order to obtain such approval, the Board of Trustees was informed of the expenditure.

CONCLUSION

In summary, Mississippi State University would emphasize the following points:

1. All funds received on behalf of Mississippi State University, the Bulldog Foundation, Bulldog Communications, and Bulldog Publications, have been used for the benefit and advancement of the athletic programs at Mississippi State University.

2. The Director of the Athletic Department, Larry Templeton, has received no pecuniary benefit beyond the salary and benefits paid to him as an employee of Mississippi State University, and has received absolutely no pecuniary remuneration as a result of any position held with said corporations.

3. All additional compensation and supplements paid to coaches have been commensurate with similar practices throughout the NCAA and in keeping with the degree and measure of success achieved by the Mississippi State athletic programs, particularly in connection with the financial success of these programs.

4. Although arguments can be made that private, non-profit foundations should be abandoned in favor of complete and total management by public entities, experience and sound common sense dictate that such a decision would not be in the interest of sound fiscal and financial interests.

5. There have been no violations of any state statutes, regulations, or constitutional provisions at Mississippi State University or within its Athletic Department. Rather, the Athletic Department at Mississippi State University has posted one of the country's best financial and fiscal records consistently for the past four years.

In closing, the Athletic Department at Mississippi State University has every reason to expect that it will be able to continue to operate "in the black" and even increase revenues. In order to do so, however, it is important that the principles discussed in detail above be given consideration. Competitive collegiate sports and athletics is an area which requires considerable talent at the coaching level and sensitivity to public perceptions. The University will continue to work within these constraints as well as within the law of the State of Mississippi.

A PEER MANAGEMENT REVIEW OF ATHLETIC PROGRAMS

Institutional Response

University of Mississippi

March 12, 1993

279

UNIVERSITY ATHLETIC PROGRAMS

The University of Mississippi Athletic Department is an auxiliary operation of the institution. For 1992-93 it received no state appropriated support. Its major sources of funds are self-generated (ticket sales, TV revenues, etc.) and student fees. Contrary to PEER's allegations (p. 49), The University of Mississippi recognizes that each of these two sources is "state funds." The point that was made to PEER staff was that the funds are not "state appropriated" funds. The distinction between self-generated vs. state appropriated funds is significant as recognized by the Mississippi Supreme Court. State v. Board of Trustees of Institutions of Higher Learning, 387 So. 2d 89 (Miss. 1980).

1. **PEER Allegation:** The Board of Trustees does not manage and control all public university athletic revenues and expenditures as required by Miss. Code Ann. Section 27-101-15.

   University Response:

   On university campuses, auxiliary enterprises are support units that generate their budgets from fees received for their services. For example, housing, the bookstore, telephone exchange, and athletic departments are all auxiliary operations.

   Before 1991, the Board of Trustees treated the athletic budget simply as another auxiliary budget and, as such,

required the income and expenditure of all auxiliary budgets, in the sum, to be within Trustee approved income and expenditure ceilings. Because revenues and expenditures in the athletic programs are so volatile, the Board of Trustees has simply required that these budgets balance at the end of the year. Changes in TV revenue, attendance, and whether one goes to a bowl game create variations, some weekly, that do not follow the very careful planning and review that go into budget construction.

The concern of PEER can be addressed by requiring official budget escalations and reductions to be made mid-year or whenever significant variations which would exceed approved revenues or expenditures become known.

A. **PEER Allegation:** University of Mississippi Athletic Director diverts Athletic Department revenues into a nonprofit athletic foundation from which he receives a housing allowance.

University Response:

The term "diverts" is used in an incorrect and misleading manner in the above allegation. The allegation claims that The University of Mississippi Athletic Director improperly deposited funds intended for a University of Mississippi account into the Loyalty Foundation for his own personal benefit. The implication is incorrect

and contains both factual and insinuated errors. Warner Alford, Athletic Director at The University of Mississippi, did not use his position as Athletic Director to "divert" any monies intended for the benefit of The University of Mississippi Athletic Department to the Ole Miss Loyalty Foundation.

The allegation states that during the fiscal year ended June 30, 1992, Mr. Alford "diverted" the sum of $35,732 in funds paid by advertisers (scoreboard and program advertising) to the Ole Miss Loyalty Foundation. This figure ($35,732) appears to have come from the "Special Funds" account in the Loyalty Foundation. This "Special Funds" account is set forth as follows:

SPECIAL FUNDS
AND
DISBURSEMENT OF SPECIAL FUNDS

$ 6,635.00	Track Program gifts (Vide Equipment)
3,325.00	Special Computer for Nut anders
1,660.00	Lady Rebel Basketball Program (T-Shirts)
315.00	Tennis Program (Ice Maker)
16,000.00	Donations by Coca-Cola and Bryan Foods
1,200.00	Golf (Ole Miss Sports Legend Tournament)
4,500.00	Men's Basketball Program
835.00	Sports Information Department (Travel to National Meeting)
$ 34,470.00	
*$1,000.00	Accounting Error
$250.00	Contribution for Advertising on Scoreboard
$12.00	Reimbursement from G.M.A.G. for overpayment on billing
($35,732.00)	

With the exception of $250.00, none of the funds in this account were paid by advertisers* for association with The University of Mississippi athletic program, nor were any of these funds utilized for a housing allowance paid to Athletic Director Alford. The funds deposited into this "Special Funds" account were received from donors and designated to be used for the following specific purposes:

(1) The sum of $6,635 was donated by 41 individuals in contributions ranging from $20 to $1,000, and was given specifically for the purchase of video equipment for the men's and women's track team.

(2) The sum of $3,325 was donated by 48 individuals in contributions ranging from $10 to $250 for the purpose of purchasing a special computer for Billy "Nub" Sanders, retired equipment manager, who lost his voice box and vocal cords due to throat cancer. This money was donated by "M" Club alumni to a man loved by all who were associated with him.

(3) The sum of $1,660 was donated by Domino's Pizza in conjunction with the Lady Rebel Basketball Tournament and was used to purchase T-shirts for all participants.

(4) The sum of $315 was donated by four individuals to the men's and women's tennis teams in order to install an ice maker at the tennis center.

*As a result of this audit, it was discovered that Candid Campus Photography, in error, made its check in the amount of $250 for a birthday message on the stadium scoreboard payable to the Loyalty Foundation. The check was deposited into the account of the Loyalty Foundation also in error. The Loyalty Foundation has now given its check in the amount of $250 to The University of Mississippi to correct this error.

(5) The sum of $16,000 was given as a donation by Bryan Foods and Coca-Cola. At the discretion of the governing board of the Loyalty Foundation, this sum was used to supplement the salary of Coach Billy Brewer.

(6) The sum of $1,200 was given by 23 persons to the foundation as part of the Ole Miss Sports Legend Golf Tournament which was held in Jackson, Mississippi.

(7) The sum of $4,500 was donated to the Loyalty Foundation by five persons to go toward the buy-out of Ed Murphy's contract.

(8) The sum of $835 was donated to the Loyalty Foundation by two businesses to cover the travel expenses for two members of the Sports Information Department to attend the National COSIDA meeting.

Of the remaining $1,262, $1,000 was an accounting error, $250 was paid in error by Campus Candid Photography for advertising on the message center, and $12 was a reimbursement from G.M.A.C. for overpayment on a billing.

The Ole Miss Loyalty Foundation has deposit slips showing the name of the donor and the various amounts of contributions by each donor for the respective designated purposes.

The allegation made by PEER is that $20,000 of these sums was used to provide additional compensation to the head football coach. This statement is in error. Sixteen Thousand Dollars

($16,000) of these funds was used to pay Head Football Coach Billy Brewer for work actually performed in connection with The Billy Brewer Show. This practice is consistent with NCAA regulations as found in NCAA By-Law 11.3.2.

PEER next alleges that the remaining funds in the "Special Funds" account were spent with no oversight. This is incorrect. All amounts except the $16,000 described above were given for specific projects as outlined above.

PEER is further in error in alleging that a housing allowance of $1,000 per month was paid to Athletic Director Alford from "The Special Funds" account. These funds have been fully accounted for above. The Loyalty Foundation does provide the housing allowance for the Athletic Director, but not from any restricted account.

PEER further suggests that the actions of the Athletic Director of The University of Mississippi "may" be in conflict with Miss. Code Ann. Sec. 25-4-105(1). This is an incorrect and unfounded statement by PEER. There is no evidence that Mr. Alford at any time misapplied or

"diverted" public funds into the Ole Miss Loyalty Foundation. There is no evidence that Mr. Alford received a housing allowance from any funds contained in this "Special Funds" account. There is no evidence that Mr. Alford used his official position to obtain any pecuniary benefit for himself other than that provided by law. There is no basis in law or fact for the statement by PEER that Athletic Director Alford "may" be in conflict with Miss. Code Ann. Sec. 25-4-105(1).

2. **PEER Allegation:** The IHL Board of Trustees' failure to control the actions of athletic directors in arranging compensation packages for head coaches may jeopardize the coaches with regard to state law.

University Response:

The employment contract between the Board of Trustees and Coach Billy Brewer, Head Football Coach at The University of Mississippi, requires that Coach Brewer report annually all athletically related income and benefits from sources outside the institution to the institution's chief executive officer, Chancellor R. Gerald Turner. Coach Brewer has faithfully complied with this requirement.

The practice of reporting athletically related income by Coach Brewer conforms with the requirement of NCAA By-Law 11.2.2, a copy of which is shown as Attachment F. There is

no state law which prohibits Coach Brewer from receiving outside income for work which he performs and which does not conflict or interfere with his official university duties. Neither is there any prohibition under NCAA legislation limiting the compensation and remuneration a coach can be paid as long as such payments are in conformity with the requirements of NCAA By-Law 11.3. Attachment G to this response is a copy of Section 11.3 of the NCAA By-Laws.

It is true that Coach Brewer is paid the sum of $75,000 a year by Mississippi Network, Inc., to compensate him for his pre-game and post-game radio show. While this sum is not reflected in the budget of The University of Mississippi Athletic Department, this sum is clearly reflected in Coach Brewer's annual report to Chancellor Turner.

Likewise, all other supplemental and outside athletically related income received by Coach Brewer is clearly reflected in his annual report to Chancellor Turner. These outside sources of income are in compliance with NCAA legislation and violate no state laws.

3. **PEER Allegation:** The IHL Board of Trustees authorized a total of $282,843 in bonuses for athletic staff at Mississippi State University, The University of Mississippi, and the University of Southern Mississippi for

post season bowl game appearances during FY 1991 and 1992 in violation of Sec. 96 of the Mississippi Constitution.

University Response:

Bonuses for post season bowl play are the common practice among all Division IA universities throughout the United States. In fact, the promise of such is usually a part of negotiations in the recruitment of coaches. Since Athletic Department staff receive their contractual salaries in years in which no post season bowl game is achieved, the bowl bonuses are viewed as extra compensation for the extra two weeks of work during the holiday season that are required to put on a bowl game.

In order to address PEER's concerns, the IHL Board will review the following alternatives.

A. That these supplements be approved and paid from the Loyalty Foundation instead of bowl funds; or

B. These payments become a part of the extra compensation for extra work policies of the Mississippi Board of Trustees, Institutions of Higher Learning.

4. **PEER Allegation:** Public university officials use public funds to provide entertainment and travel for university administrative staff and IHL Board members in relation to post season bowl games.

University Response:

The demand of the thousands of alumni and supporters who attend activities that are associated with bowl games, the demands of the media, and the required bowl activities make attendance at a post season game a part of the job expectations of athletic and administrative staff. As a result, expenditures for university officials to such activities are entirely justifiable.

Support of major events in the life of the eight universities is expected of members of the Board of Trustees. In addition, as described above, university personnel value having time to educate Trustees about their university's programs and employees. In addition, bowl officials expect Trustees to attend bowl related activities. As a result, it is appropriate for Board of Trustees members to have their expenses paid by the participating universities.

5. **PEER Allegation:** Inefficient use of funds resulted in The University of Mississippi spending more than it made for its 1991 Gator Bowl appearance (See Exhibit 25, p. 62).

University Response:

Had PEER staff reviewed the final university audit of the FY91 budget, they would have discovered the notation of an error of $17,490.00 income for the 1991 Gator Bowl that was

corrected on July 31, 1991. This error was located after the close of the University 1990-91 fiscal year. Therefore, the Gator Bowl account (1139135) has been adjusted as follows:

Account 1139135 Balance 6/30/91	$ 498,602.45
Receipting Adjustment	17,490.00
Gr Income	516,092.45
Le Expenditures 6/30	499,373.71
Adjusted Profit on Gator Bowl	$ 16,718.74

Copies of documentation regarding the above are attached. This error was not located until a reconciliation was made after the University's fiscal accounting run of 1990-91. Therefore, The University of Mississippi did not show a loss on the 1991 Gator Bowl; instead, a gain of $16,718.74 resulted (See Attachment H).

shall deport themselves with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports. (See Bylaw 10 for more specific ethical-conduct standards.)

* **11.1.2 Responsibility for Violations of NCAA Regulations.** Institutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution.

* **11.1.3 Use of Association Name or Affiliation.** Staff members of member institutions and others serving on the Association's committees or acting as consultants shall not use, directly or by implication, the Association's name or their affiliation with the Association in the endorsement of products or services.

* **11.1.4 Use of Institutional Name or Logo.** Athletics department staff members shall not, directly or by implication, use the institution's name or logo in the endorsement of commercial products or services for personal gain without prior approval from the institution.

* **11.1.5 Marketing Student-Athletes to Professional Teams/Organizations.** Staff members of the athletics department of a member institution shall not represent, directly or indirectly, any individual in the marketing of athletics ability or reputation to a professional sports team or professional sports organization and shall not receive compensation or gratuities of any kind, directly or indirectly, for such services.

* **11.1.6 Involvement in Noncertified All-Star Contests.** Staff members of the athletics department of a member institution shall not knowingly participate, directly or indirectly, in the management, coaching, officiating, supervision, promotion or player selection of any all-star contest involving student-athletes that is not certified by the Association's Special Events Committee.

11.2 CONTRACTUAL AGREEMENTS

* **11.2.1 Stipulation That NCAA Enforcement Provisions Apply.** Contractual agreements or appointments between a coach and an institution shall include the stipulation that a coach who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures.

* **11.2.1.1 Termination of Employment.** Contractual agreements or appointments between a coach and an institution shall include the stipulation that the coach may be suspended for a period of time, without pay, or that the coach's employment may be terminated if the coach is found to be involved in deliberate and serious violations of NCAA regulations.

I/II **11.2.2 Report of Athletically Related Income.** Contractual agreements, including letters of appointment, between a full-time or part-time coach and an institution shall include the stipulation that the coach is required to report annually (in writing or orally) all athletically related income and benefits from sources outside the institution through the athletics director to the institution's chief executive officer. Sources of such income shall include, but are not limited to, the following:

(a) Income from annuities;

(b) Sports camps;

(c) Housing benefits (including preferential housing arrangements);

(d) Country club memberships;

(e) Complimentary ticket sales;

(f) Television and radio programs, and

(g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

I **11.2.3 Contractual Obligations Honored Subsequent to Adoption of Limits on Numbers.** Limitations on the number of coaches do not apply in circumstances where academic tenure, enforceable contracts or formal security-of-employment commitments make it impossible to comply with such limits. These exceptions, which apply only to written commitments, continue until the end of the contract period or normal attrition makes it possible to comply with limitations. Normal attrition shall be defined as the death, retirement or voluntary resignation of an employee or the discharge or transfer of an employee from the athletics department by the institution.

ATTACHMENT G

11.3 LIMITATIONS ON COMPENSATION AND REMUNERATION

See 11.02 for additional regulations regarding coaches' compensation and remuneration.

11.3.1 Control of Employment and Salaries. The institution, as opposed to any outside source, shall remain in control of determining who is to be its employee and the amount of salary the employee is to receive within the restrictions specified by NCAA legislation. *

11.3.2 Income in Addition to Institutional Salary

11.3.2.1 Bona Fide Outside Employment. A staff member may earn income in addition to the institutional salary by performing services for outside groups, provided the compensation is for additional work actually performed and at a rate commensurate with the going rate in that locality for services of like character; further, such outside work must be in conformity with institutional policy and with the approval of the institution. *

11.3.2.2 Supplemental Pay. An outside source is prohibited from paying or regularly supplementing an athletics department staff member's annual salary and from arranging to supplement that salary for an unspecified achievement. This includes the donation of cash from outside sources to the institution earmarked for the staff member's salary or supplemental income. It would be permissible for an outside source to donate funds to the institution to be used as determined by the institution, and it would be permissible for the institution, at its sole discretion, to use such funds to pay or supplement a staff member's salary. *

11.3.2.3 Bonuses for Specific and Extraordinary Achievement. An institution may permit an outside individual, group or agency to supplement an athletics department staff member's salary with a direct cash payment in recognition of a specific and extraordinary achievement (e.g., contribution during career to the athletics department of the institution, winning a conference or national championship, number of games or meets won during career), provided such a cash supplement is in recognition of a specific achievement and is in conformance with institutional policy. *

11.3.2.4 Extra Compensation Restriction for Division II and Division III Coaches. A member institution shall not give extra compensation or remuneration of any sort to any coach conditioned upon or because of the number of games the coach's team wins, or because the team goes to a bowl game or tournament or participates in championships. These limitations on extra compensation to coaches do not apply where enforceable contracts or formal security-of-employment commitments in effect on August 15, 1976, make it impossible to comply with the limitations. These exceptions are continued until existing contracts or formal security-of-employment commitments expire. II/III

11.3.2.5 Endorsement of Commercial Products. Athletics department staff members shall not use, directly or by implication, the institution's name or logo in the endorsement of commercial products or services for personal gain without prior approval from the institution. *

11.3.2.6 Promotional Activities. A staff member of a member institution's athletics department may not be compensated by an individual or commercial business outside of the institution for employment or assistance in the production, distribution or sale of items (e.g., calendars, pictures, posters, advertisements, cards) bearing the names or pictures of student-athletes. The use of the names or pictures of student-athletes on promotional items is limited to institutionally controlled activities involving the sale of official institutional publications and team or individual pictures by the institution. This restriction shall apply even if the promotional item is provided without charge to the public by an outside individual or commercial business that produces or purchases the item through the assistance of the institution's staff member. *

11.3.2.7 Compensation in Exchange for Use of Merchandise. Staff members of a member institution's athletics department shall not accept, prior to receiving approval from the institution's chief executive officer, compensation or gratuities (excluding institutionally administered funds) from an athletics shoe, apparel or equipment manufacturer in exchange for the use of such merchandise during practice or competition by the institution's student-athletes. *

11.3.2.8 Compensation for Scheduling Contests/Individual Participation. Staff members of a member institution's athletics department shall not accept compensation or gratuities for scheduling athletics contests or individual meet participation with another institution or a sponsor of athletics competition. This specifically precludes the acceptance of compensation or gratuities from other institutions, schedule brokers or agents, and television networks or syndicators. *

THE UNIVERSITY OF MISSISSIPPI
UNIVERSITY, MISSISSIPPI

ATTACHMENT H

INTERDEPARTMENTAL COMMUNICATION

TO: • Dr. R. Gerald Turner - Chancellor

FROM: • Reed Davis - Associate Athletic Director and Director of Finance

DATE 2/23/93

SUBJECT: • Gator Bowl - 1990

For your information an error of $17,490.00 income for the 1991 Gator Bowl was found July 31, 1991. This error was located after the close of the University 1990-91 fiscal year, therefore the Gator Bowl account (1139135) should be adjusted as follows:

Account 1139135 Balance 6/30/91	$498,602.45
Receipting Adjustment	17,490.00
Gross Income	516,092.45
Less: Expenditures 6/30/91	499,373.71
Adjusted profit on Gator Bowl	$ 16,718.74

The error accurred as the first three deposits for bowl receipts (included in University CR# 114 - dated 12-12-90) were deposited to account 1139101 - Football Income. An attempt to correct this was made by Indepartmental Transfer vouchers numbers MI1175, MI1176 and MI1177. The accounting entries on these vouchers were made in reverse order, thus compounding the receipting error.

Indepartmental Transfer voucher number MI1455 (dated 1/29/91) was processed to correct the problem, however, the $17,490.00 which had been duplicated in account 1139101 was only adjusted for $17,490.00, the result being the $17,490.00 deposit was still in account 1139101.

As stated earlier this error was not located until a reconcililation was made after the University's fiscal accounting run of 1990-91.

Copies of documentation regarding the above are attached and if you need additional or clarifying information please let me know. I trust this is the information you need to show that, in fact, a financial loss did not occur on the 1991 Gator Bowl.

RD/bj

Enclosures

A PEER MANAGEMENT REVIEW OF ATHLETIC PROGRAMS

Institutional Response

- University of Southern Mississippi
- Alcorn State University
- Delta State University
- Jackson State University
- Mississippi University for Women
- Mississippi Valley State University

(REFER TO INSTITUTIONAL RESPONSE UNIVERSITY FOUNDATIONS.)

March 12, 1993